accordance with Community rules which define what those benefits shall consist of.

It follows that the words "sickness and maternity benefits" within the meaning of Article 4 (1) (a) and Chapter 1 of Title III of Regulation No 1408/71 must be interpreted as including benefits under legislation concerning invalidity which are in the nature of medical or surgical benefits.

3. The essential object of Regulation No 1408/71 adopted under Article 51 of the Treaty is to ensure that social security schemes governing workers in each Member State moving within the Community are applied in accordance with uniform Community criteria. To this end it lays down a whole set of rules founded in particular upon the prohibition of discrimination on grounds of nationality or residence and upon the maintenance by a worker of his rights acquired by virtue of one or more social security schemes which are or have been applicable to him. To interpret Regulation No 1408/71 as prohibiting national legislation to grant a worker social security broader than that provided by the application of the said regulation would therefore be going beyond that objective, and also outside the purpose and scope of Article 51.

4. Regulation No 1408/71, having regard also to Articles 19 and 28 (1) thereof, does not fetter the power of the competent institution of a Member State to grant sickness or maternity benefits, within the meaning of Article 4 (1) (a) of the said regulation, including benefits of a medical or surgical nature, to a person who is in receipt of an invalidity pension under the legislation of that Member State and who resides in the territory of another Member State.

In Case 69/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Centrale Raad van Beroep [Court of Last Instance in Social Security Matters], Utrecht, Netherlands, for a preliminary ruling in the proceedings pending before that court between

W. JORDENS-VOSTERS, Overpelt, Belgium,

and

the BESTUUR VAN DE BEDRIJFSVERENIGING VOOR DE LEDER- EN LEDERVERWERKENDE INDUSTRIE [Board of the Association for the Leather and Leather-processing Industry], Tilburg, Netherlands,

on the interpretation of Article 4 (1) (a) and Articles 19 (1) and (2) and 28 (1) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition, 1971 (II), p. 416),

THE COURT (First Chamber)

composed of: A. O'Keeffe, President of Chamber, G. Bosco and T. Koopmans, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

1. Mrs Jordens-Vosters, Overpelt (Belgium), resident in Belgium, worked in the Netherlands as a wage-earner from 14 June 1966 to 12 August 1970. On the latter date she became incapacitated for work, as a result of which she was granted, pursuant to the Netherlands Wet op de Arbeidsongeschicktheidsverzekering [Law on insurance against protracted incapacity for work], hereinafter referred to as "the WAO", a pension as from 11 August 1971 calculated on the basis of incapacity for work of 80 to 100 %.

From 4 to 29 June 1973 Mrs Jordens stayed at a clinic in Belgium. The total costs of her stay in hospital were Bfr 40 946, of which Bfr 10 511 — in respect of superior-class accomodation, pharmaceutical products, the use of the telephone and a television set, accomodation and meals for members of her family and visitors — had to be paid by the insured person without reimbursement.

Further, during the period of 20 August 1973 to 10 May 1974, Mrs Jordens spent Bfr 12 937 on medicines, for which she was not reimbursed by any insurance

institution. In addition, the applicant's husband, also resident in Belgium, was employed as a wage-earner in the Netherlands in 1973/1974 and by virtue of that employment was insured under the Ziekenfondswet [Netherlands Law on sickness insurance].

2. On the basis of Article 60 of the WAO, repealed as from 1 October 1976, Mrs Jordens applied to the competent social security institution, the Bestuur van de Bedrijfsvereniging voor de Leder- en Lederverwerkende Industrie, Tilburg hereinafter referred to as "the Bedrijfsvereniging", for reimbursement of the aforesaid expenses incurred in respect of her stay in hospital and medicines and borne by her.

That article provided as follows:

"1. The Bedrijfsvereniging is empowered to consider insured persons, persons who have been insured, persons who have completed the waiting period of 52 weeks referred to in Article 19 and persons who are or have been in receipt of a pension for incapacity for work, at the request of the insured person or otherwise, for benefits intended to maintain, restore or improve their capacity for work, as well as for medical or surgical benefits, on condition that those benefits are provided with the consent of the person concerned or of his legal representative, without prejudice to the provisions of Articles 25 and 28 (a) and (c).

2. Further, the Bedrijfsvereniging may consider the persons referred to in the previous paragraph, at their request or otherwise, for benefits designed to improve their living conditions.

3. The persons referred to in the previous paragraphs may, subject to the provisions of the following paragraph and of Article 61, be considered for the benefits referred to in the previous paragraph only if those benefits do not form part of the benefits in kind governed by Article 8 (2) of the Ziekenfondswet [Law on sickness insurance] and by Article 6 (2) of the Algemene Wet Bijzondere Ziektekosten [General Law on insurance against special sickness costs].

4. In special cases and with the consent of the Arbeidsongeschiktheidsfonds [Insurance fund for incapacity for work], the Bedrijfsvereniging is empowered to consider the persons referred to in the previous paragraphs, who are not insured under the Ziekenfondswet and the Algemene Wet Bijzondere Ziektekosten, for the benefits referred to in paragraphs 1 and 2 if those benefits form part of the benefits in kind governed by Article 8 (2) of the Ziekenfondswet and by Article 6 (2) of the Algemene Wet Bijzondere Ziektekosten.

5. The court may review the fairness of a partial or total rejection by the Bedrijfsvereniging of an application for the benefits referred to in the previous paragraphs, made by the person concerned or on his behalf."

3. After the Bedrijfsvereniging had rejected the application of the person concerned, she took the case to the Raad van Beroep, 's Hertogenbosch, which, by a judgment of 15 July 1975, upheld the decision at issue. The person concerned then appealed against that judgment to the Centrale Raad van Beroep, Urecht, which, by an order of 10 October 1978, decided to stay proceedings and, pursuant to Article 177 of the EEC Treaty, to refer to the Court of Justice for a preliminary ruling on questions

worded as follows in a supplementary order of 13 March 1979:

"Question 1

Must the words 'sickness and maternity benefits' within the meaning of Article 4 (1) (a) and Chapter 1 of Regulation (EEC) No 1408/71 be interpreted as also including in principle benefits under legislation concerning invalidity which are in the nature of medical or surgical benefits?

Question 2

If Question 1 is answered in the affirmative, does that mean, having regard to Article 19 (1) and (2) and Article 28 (1) of the regulation, that the competent institution of a Member State is not empowered to grant such benefits to a person who is entitled to invalidity benefits under the legislation of that Member State if the person concerned resides in the territory of another Member State and as a result the legislation concerning sickness (and maternity) benefits of the latter State is applicable to him?

Question 3

If Question 1 is answered in the negative, must Articles 19 and 28 of the regulation be interpreted as excluding supplementary measures under the legislation of a Member State concerning invalidity pursuant to which the person concerned is entitled to invalidity benefits if the person concerned resides in the territory of another Member State and as a result the legislation concerning sickness (and maternity) benefits of the latter Member State is applicable to him?"

In asking those questions, the Centrale Raad van Beroep considered:

— that the Bedrijfsvereniging clearly relied on the premise that it may not accept a claim concerning mainly benefits in kind ("verstrekkingen") which by their nature form part of the group of benefits in kind governed by the Ziekenfondswet and the Algemene Wet Bijzondere Ziektekosten. However, the third paragraph of Article 60 does not exclude application of the first two paragraphs of that provision in respect of that part of such benefits which falls outside the scope of their system;

— that, although the said Article 60 was repealed as from 1 October 1976, Article 57 of the Algemene Arbeidsongeschiktheidswet [General Law on incapacity for work], which entered into force on the same date, contains an analogous provision empowering the Bedrijfsvereniging, subject to certain conditions, to consider persons receiving a pension in respect of incapacity for work for benefits covering *inter alia* health care;

— that the person concerned, being an employed person within the meaning of Article 1 (a) (ii) of Regulation (EEC) No 1408/71 of the Council, is a person "entitled to draw a pension" within the meaning of Article 28 of that regulation;

— that furthermore, as her husband was also a worker within the meaning of Regulation No 1408/71, the person concerned was a "member of the family" within the meaning of Article 1 (f) of the regulation with the result that it would in the present case be necessary to consider the provisions of Article 19 (2) of that regulation;

— that the WAO, as is clear from the declaration made by the Netherlands Government pursuant to Article 5 of Regulation (EEC) No 1408/71, constitutes legislation concerning invalidity benefits, so that those benefits are amongst those covered by Title III, Chapter 2 of the said regulation.

4. A letter from the acting President of the Centrale Raad van Beroep, to which were annexed the orders making the reference to the Court, was received at the Court on 27 April 1979.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by the Commission of the European Communities, represented by its Legal Adviser, J. Amphoux, assisted by A. Haagsma, a member of the Legal Service of the Commission.

After hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry and to refer the case to the First Chamber pursuant to Article 95 of the Rules of Procedure.

II — Written observations submitted pursuant to Article 20 of Protocol on the Statute of the Court of Justice

The *Commission of the European Communities* points out that the questions referred to the Court by the Centrale Raad van Beroep in substance seek to ascertain whether and to what extent Community law, as laid down by Regulation No 1408/71, prevents the Bedrijfsvereniging concerned from paying the benefits claimed.

In its opinion, the aforesaid questions disclose in essence two problems:

(a) are the benefits in kind in respect of medical care for which provision is made in a Member State in the context of a Law on incapacity for work covered by the rules of Community law on invalidity or by those on "sickness and maternity"?

(b) does Community law prevent a competent institution from granting a supplementary benefit?

As regards (a), the Commission examines the following considerations:

The need for a uniform application of Community law, which is obvious where a directly applicable provision is involved, implies that the concept of "sickness and maternity benefits" is a Community concept, the meaning of which cannot depend on national law. Therefore the context of the domestic provisions concerning such benefits cannot be used to establish which provisions of Community law are applicable.

Moreover, a more thorough examination of Regulation No 1408/71 discloses that the chapter on invalidity contains only provisions concerning cash benefits and not benefits in kind. Therefore if the chapter entitled "sickness and maternity" could not be applied to the provisions of the Laws on incapacity for work, no provision of Community law would be applicable to those domestic provisions to the extent to which they concern benefits in kind.

In conclusion, the result should not depend on the type of legislation in

which a provision occurs, but on the nature of each provision considered in isolation. Therefore a domestic provision concerning "benefits of a medical or surgical nature" is governed by the Community provisions on "sickness and maternity", even where it is included in a Law on incapacity for work.

As regards (b), it may be pointed out that the general object of Regulation No 1408/71, adopted pursuant to Article 51 of the EEC Treaty, is to guarantee the maintenance of the rights of workers and of those entitled in right of them.

However, the minimum thus guaranteed does not preclude a Member State from providing more extensive social welfare than that which it is required to provide by virtue of the said regulation.

Moreover, it is clear from the case-law of the Court that the social security regulations may not reduce the rights of workers without conferring upon them the compensating benefits prescribed in those regulations (Case 34/69 *Duffy* [1969] ECR 597), or lead to a diminution of the rights, or indeed of any advantages, enjoyed in a Member State by virtue of the application of the national legislation alone (Case 24/75 *Petroni* [1975] 2 ECR 1149).

Regulation No 1408/71 does not in any way seek to introduce such a limitation and does not preclude a Member State from supplementing the guaranteed minimum laid down in that regulation.

In view of the foregoing, the Commission proposes the following replies to the questions asked by the Centrale Raad van Beroep:

"1. The words 'sickness and maternity benefits' within the meaning of Article 4 (1) (a) and Chapter 1 of Title III of Regulation (EEC) No 1408/71 encompass all the benefits payable in the event of sickness and maternity, irrespective of the legislation which provides for the granting thereof, and therefore include the benefits of a medical or surgical nature provided under national legislation on 'invalidity'.

2. No provision of the said regulation precludes the competent institution of a Member State from granting a supplement to the guaranteed minimum laid down in the regulation; in particular, Articles 19 and 28 of that regulation do not preclude the competent institution of a Member State from granting a benefit of a medical or surgical nature to a person entitled to an invalidity pension, where the latter is resident in the territory of another Member State and as a result the legislation of that other State on sickness and maternity benefits is applicable to him."

III — Oral procedure

At the sitting on 22 November 1979 the Commission of the European Communities, represented by A. Haagsma, a member of the Legal Department of the Commission, presented oral argument.

The Advocate General delivered his opinion during the same sitting.

Decision

1 By letter of 25 April 1979 which was received at the Court on 27 April 1979, the President of the Centrale Raad van Beroep sent to the Court two orders of the Centrale Raad van Beroep of 10 October 1978 and 13 March 1979 respectively by which that court referred questions to the Court under Article 177 of the EEC Treaty concerning the interpretation of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416).

2 Those questions arose out of a dispute concerning the refusal by the Netherlands social security institution, the Bestuur van de Bedrijfsvereniging voor de Leder- en Lederverwerkende Industrie, Tilburg, hereinafter referred to as the "Bedrijfsvereniging", to grant to a person receiving a pension for incapacity for work under the Netherlands law on insurance against protracted incapacity for work, hereafter referred to as "the WAO", reimbursement of part of hospital expenses and cost of medicines incurred in 1973/74 for which she was not indemnified by any other social security institution.

3 Article 60 of the Netherlands law on insurance against protracted incapacity for work (WAO), repealed from 1 October 1976, but substantially re-enacted by the General Law on incapacity for work [Algemene Arbeidsongeschiktheidswet] which entered into force on the same date, provided in paragraph (3) that recipients of a pension for incapacity for work may in certain circumstances be entitled to "benefits intended to maintain, restore or improve their capacity for work as well as medical or surgical benefits," provided that "those benefits do not form part of the benefits in kind governed by ... the Ziekenfondswet or ... by the Algemene Wet Bijzondere Ziektekosten ...". A further factor in the case as just described is that the Bedrijfsvereniging refused the claimant such an allowance for the disputed hospital expenses and medicines on the ground that those expenses formed part of the whole of the benefits in kind governed by the Ziekenfondswet or by the said Algemene Wet Bijzondere Ziektekosten and were thus excluded from those which could be granted to the recipient of a pension for incapacity for work under Article 60 (3) of the WAO, the fourth paragraph of which article provided however that the Bedrijfsvereniging has the power, in particular circumstances and upon certain conditions to grant insured persons that allowance.

4 In view of that legislation and having regard to the rules of Community law on "sickness and maternity benefits", the Centrale Raad van Beroep asked the Court of Justice for a preliminary ruling upon the following questions:

"Question 1

Must the words 'sickness and maternity benefits' within the meaning of Article 4 (1) (a) and Chapter 1 of Regulation (EEC) No 1408/71 be interpreted as also including in principle benefits under legislation concerning invalidity which are in the nature of medical or surgical benefits?

Question 2

If Question 1 is answered in the affirmative, does that mean, having regard to Article 19 (1) and (2) and Article 28 (1) of the regulation, that the competent institution of a Member State is not empowered to grant such benefits to a person who is entitled to invalidity benefits under the legislation of that Member State if the person concerned resides in the territory of another Member State and as a result the legislation concerning sickness (and maternity) benefits of the latter State is applicable to him?

Question 3

If Question 1 is answered in the negative, must Articles 19 and 28 of the regulation be interpreted as excluding supplementary measures under the legislation of a Member State concerning invalidity pursuant to which the person concerned is entitled to invalidity benefits if the person concerned resides in the territory of another Member State and as a result the legislation concerning sickness (and maternity) benefits of the latter Member State is applicable to him?"

(a) The first question

5 From the explanations given by the President of the Centrale Raad van Beroep it appears that that court, having established that Regulation No 1408/71 is applicable to the person concerned owing to the fact that she is the recipient of a pension or the spouse of an employed worker, in asking its

first question essentially wishes to know whether benefits granted under legislation on invalidity, such as the Netherlands WAO, which are in the nature of medical or surgical benefits, constitute "sickness and maternity benefits" within the meaning of Article 4 (1) (a) and Chapter 1, Title III, of that regulation or whether they are in the nature of "invalidity benefits" as under (b) of Article 4 (1) and under Chapter 2 of Title III of the same regulation.

6 It is well established that the requirement that Community law be applied uniformly within the Community implies that the concepts to which that law refers should not vary according to the particular features of each system of national law but rest upon objective criteria defined in a Community context. In accordance with this principle, the concept of "sickness and maternity benefits" appearing in Article 4 (1) (a) of Regulation No 1408/71 is to be determined for the purpose of applying the regulation not according to the type of national legislation containing the provisions giving those benefits, but in accordance with Community rules which define what those benefits shall consist of.

7 Regulation No 1408/71 governs the problems arising from invalidity benefits in Title III, Chapter 2, whilst sickness and maternity benefits are dealt with by provisions in Chapter 1 of the same Title. However, the provisions of Title III, Chapter 2, cover "cash" benefits only among the benefits granted on the ground of "invalidity", omitting benefits "in kind". Problems to do with benefits in kind are dealt with, on the other hand, by the provisions of Chapter 1 of the same Title. As can be seen from Article 22 in particular, those provisions covering both benefits in kind and cash benefits include benefits in the nature of health care among benefits in kind paid under "sickness and maternity" and thus also extend to medical or surgical benefits.

8 In these circumstances and in view of the general reference in the opening words of Article 4 (1) to "all" legislation concerning the branches of social security set out from (a) to (h), it is appropriate to hold that Regulation No 1408/71 includes amongst sickness and maternity benefits referred to in

Article 4 (1) (a) all benefits provided in the case of sickness and maternity including health care, whatever the type of social legislation or whatever benefits are provided, as long as the legislation in question relates to a branch of social security which concerns them.

9 Therefore the answer to the first question should be that the words "sickness and maternity" benefits within the meaning of Article 4 (1) (a) and Chapter 1 of Title III of Regulation No 1408/71 must be interpreted as including benefits under legislation concerning invalidity which are in the nature of medical or surgical benefits.

(b) The second question

10 From the explanations given by the President of the Centrale Raad van Beroep referred to above it appears that that court wishes to know by its second question whether, if the disputed benefits are to be considered as sickness and maternity benefits within the meaning of Article 4 (1) (a) of Regulation No 1408/71, that regulation, and in particular Articles 19 and 28 (1), must be interpreted as meaning that the competent institution of a Member State does not have the power to grant benefits of a medical or surgical nature to the recipient of an invalidity pension drawn under the legislation of that State who resides in a Member State other than the competent State, or if on the contrary, the said regulation does not preclude the said benefits from being granted to such an insured person when the granting of that benefit is permitted in particular circumstances by the above-mentioned social legislation.

11 The essential object of Regulation No 1408/71 adopted under Article 51 of the Treaty is to ensure that social security schemes governing workers in each Member State moving within the Community are applied in accordance with uniform Community criteria. To this end it lays down a whole set of rules founded in particular upon the prohibition of discrimination on grounds of nationality or residence and upon the maintenance by a worker of his rights acquired by virtue of one or more social security schemes which are or have been applicable to him. To interpret Regulation No 1408/71 as

prohibiting national legislation to grant a worker social security broader than that provided by the application of the said regulation would therefore be going beyond that objective, and also outside the purpose and scope of Article 51.

12 Nor does such an interpretation gather any support from either the letter or the spirit of Articles 19 and 28 (1) of Regulation No 1408/71. Article 19 (1) (a) lays down that benefits in kind to which a worker residing within the territory of a Member State other than the competent State is entitled shall be provided on behalf of the competent institution by the institution of the place of residence in accordance with legislation administered by that institution as though he were insured with it and Article 19 (2) extends those rules to members of the worker's family who are residing in the territory of a Member State other than the competent State. Article 28 (1) embodies the same principle by providing similar rules as regards *inter alia* recipients of a pension residing in the territory of a Member State other than the competent State. These provisions essentially confine themselves to laying down "rules of conflict" enabling the determination, in regard to a worker or recipients of a pension residing in a Member State other than the competent State, of the institution responsible for the payment of the benefits therein mentioned as well as the law applicable. In these circumstances, it would be misconstruing the letter and the spirit of Articles 19 and 28 (1) to interpret them as prohibiting the competent institution to grant social benefits to a worker or a recipient of a pension which are more favourable than those which it is bound to provide for them under the Community rules if the national legislation which that institution applies enables it in particular circumstances to grant such additional social security to those insured persons.

13 It matters little that in this case a worker or a recipient of the pension in question resides in the territory of a Member State other than the competent State. Although under Articles 19 and 28 (1) of Regulation No 1408/71 such a factor is decisive for the determination of the institution responsible for the provision of the benefits to which the insured person is entitled and of the law applicable to the provision of those benefits, for the reasons set out above, it has no bearing on the grant by the relevant legislation of additional social benefits to which the insured person is not entitled but which the competent institution may allow him or her.

14 The answer to the second question should therefore be that Regulation No 1408/71 having regard also to Articles 19 and 28 (1) thereof does not fetter the power of the competent institution of a Member State to grant sickness or maternity benefits, within the meaning of Article 4 (1) (a) of the said regulation, including benefits of a medical or surgical nature, to a person who is in receipt of an invalidity pension under the legislation of that Member State and who resides in the territory of another Member State.

15 In view of the answer to the first question, no examination of the third question is necessary.

Costs

16 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable and as the proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the questions referred to it by the President of the Centrale Raad van Beroep by letter dated 25 April 1979, hereby rules:

1. **The words "sickness and maternity benefits" within the meaning of Article 4 (1) (a) and Chapter 1 of Title III of Regulation No 1408/71 must be interpreted as including benefits under legislation concerning invalidity which are in the nature of medical or surgical benefits.**

2. **Regulation No 1408/71, having regard also to Articles 19 and 28 (1) thereof, does not fetter the power of the competent institution of a Member State to grant sickness or maternity benefits, within the meaning of Article 4 (1) (a) of the said regulation, including benefits**

of a medical or surgical nature, to a person who is in receipt of an invalidity pension under the legislation of that Member State and who resides in the territory of another Member State.

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 10 January 1980.

A. Van Houtte
Registrar

A. O'Keeffe
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 22 NOVEMBER 1979

My Lords,

I do not think it necessary for me in this case to take time to consider my opinion. I so entirely agree with the observations of the Commission that I am content to adopt them as my own.

The questions referred to the Court by the Centrale Raad van Beroep should in my opinion be answered in the manner suggested by the Commission.