OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 4 FEBRUARY 1982 [1]

Mr President,
Members of the Court,

1. The reference for a preliminary ruling and some relevant facts

Peter Knoeller worked in Belgium during the period from 1928 to 1938. After his return to Germany he worked there until 18 August 1967 on which date he was dismissed from his employment. From 19 August to 1 December 1967 he was in receipt of unemployment benefit. On 4 December 1967 he was granted an invalidity pension with retroactive effect from 1 December, the date on which his invalidity was certified. Pursuant to Regulations Nos 3 and 4 the competent German institution approached the Institut National d'Assurance Maladie-Invalidité [National Sickness and Invalidity Insurance Institution] (hereinafter referred to as "the Belgian institution") in order to obtain for Mr Knoeller the proportional pension in respect of the period worked in Belgium. On Form E 26 intended for that purpose it was, however, not mentioned that Mr Knoeller had been compulsorily insured during the period from 19 August to 1 December 1967 or that that period was therefore to be treated as an assimilated period. That omission was obviously due to the irrelevance of that fact as regards the grant of an invalidity pension under German law.

The Belgian institution, however, rejected the German institution's request on the ground that according to Belgian law (Article 66 of the Law of 1963 and Article [illegible] of the Royal Decree of 1963) it was not shown that the day on which the invalidity was certified was immediately preceded by a period of at least 120 working days or assimilated days of compulsory insurance. Taking the date of 18 August 1967 as the last day of compulsory insurance applicable the Belgian institution considered that that requirement was not satisfied. It is true that by letters of 5 and 21 March 1970, which are included in the file, the Belgian institution was informed of the existence of the period of unemployment during which Mr Knoeller was also compulsorily insured. A revised Form E 26 was, however, not sent. Applying a strict interpretation of the significance of that form, the Belgian institution considered that it was not required to take that supplementary information into consideration. Two lower courts found against the institution, which then appealed to the Belgian Cour de Cassation; in the course of those proceedings, that court referred the following question to the Court of Justice:

"To determine the proportional invalidity pension due to a worker for work done in Belgium must reference be made only to the information contained in Form E 26 provided for by Article 34 of Regulation No 4 of the Council of the European Economic Community of 3 December 1958 on implementing procedures and supplementary provisions in

1 — Translated from the Dutch.

respect of Regulation No 3 concerning social security for migrant workers or may the said Form E 26 be supplemented or explained subsequently by other information?"

I would mention in passing that, as a result of the obstinacy with which the Belgian institution has insisted upon its point of view in spite of having lost its case in actions before two Belgian courts, Mr Knoeller has now been deprived for as many as 15 years of the Belgian proportional invalidity pension.

2. Assessment of the question raised

Pursuant to Article 2 (1) of Regulation No 4 models of certificates and other documents required for giving effect to Regulation No 3 are to be drawn up by the Administrative Commission which was set up under Article 43 of that regulation. Article 33 of Regulation No 4 provides that, in implementing Articles 26 to 28 of Regulation No 3 "the scrutineer institution shall use a form setting out the detail and total of the insured periods and assimilated periods completed by the insured person under the legislation of each of the Member States to which he was subject". The Belgian institution is of the opinion that that document, known as Form E 26, is of such importance that only those periods of time mentioned in it may be taken into account.

It seems to me clear that, as Mr Advocate General Warner declared in an earlier case concerning formalities to be observed in connection with Regulation No 1408/71 (Case 41/77 *The Queen* v *National Insurance Commissioner, ex parte Christine Margaret Warry* [1977] ECR 2085), if Mr Knoeller is not entitled to a Belgian invalidity pension, Regulation No 3 has in that respect "glaringly" failed to achieve its purpose. Thus, it has been consistently held by the Court in its judgments that rights under social security which may be acquired by virtue of the application of national legislation alone may never be affected by the application of Community rules in the matter. That principle which is based on the objectives and scheme of Article 51 of the EEC Treaty was enunciated by the Court as early as 1967 in its judgment of 5 July 1967 in Case 1/67 *Ciechelski* [1967] ECR 181 at p. 191, which is also mentioned by the Commission in its written observations, and has been upheld in many subsequent judgments. More particularly the Court held in its judgment in Case 66/74 *Farrauto* v *Bau-Berufsgenossenschaft* [1975] ECR 157 at p. 161 that Community rules on social security aimed at ensuring freedom of movement for workers "are concerned with removing certain obstacles of a material and administrative nature". In the light of those judgments the reply to be given should not be that Regulations Nos 3 and 4 are to be interpreted as meaning that such obstacles may again be erected, this time at Community level. In the same case the Court held that direct communication between the social security institutions of the Member States and the persons concerned "serves to simplify administrative formalities and to speed matters up", whereby "certain forms and methods are available to

safeguard legal certainty in the interests of the persons concerned". That judgment therefore also militates in favour of a functional interpretation of administrative provisions contained in such regulations. The Commission also cites in that connection the judgment of the Court in the *Nonnenmacher* case (Case 92/63 [1964] ECR 281).

The Commission in its written observations rejects the interpretation advocated by the Belgian institution referring primarily to the extent of the powers of the Administrative Commission attributed to it by the regulations and by the Court. Contrary to the Commission, I do not think, however, that a convincing argument for the rejection of the interpretation advocated by the Belgian institution can be made out on the basis of the non-mandatory character of the rules adopted by that body, as regards *inter alia* the drawing-up of the forms in question. Article 33 (1) of Regulation No 4 clearly lays down that the use of Form E 26 is mandatory. It was precisely "the detail and total" of the insured periods and assimilated periods which in this case were omitted from the form. More persuasive, in my view, is the argument put forward by the Commission at the oral procedure, that the obligation laid down in Article 34 (1) relates exclusively to periods of insurance or assimilated periods which are completed under the legislation to which the institution concerned was subject. Thus the German institution in completing the form in this case was right to have had regard to the relevant German law. Moreover, the French, German and Italian versions of Article 33 clearly show that the requirement laid down in paragraph 1 that a form be used does not mean that the probative force of other supporting documents is thereby rendered nugatory, thus making it no longer possible to refer to such documents to supplement or reinforce the form. Paragraph 2 of that provision merely states that the sending of supporting documents is no longer necessary ("remplace la transmission"), "sostituisce la trasmissione" and "ersetzt die Übersendung"). The Dutch text brings this meaning out still more clearly by providing that "dit formulier *kan* in de plaats van bewijsstuken aan de bevoegde organen van een andere Lid-Staat worden gezonden" [this form *may* be transmitted to the competent institutions of another Member State in place of the supporting documents]. That provision thus permits the sending of supporting documents such as the letters written in the present case by the German institution, with the result that the interpretation advocated by the Belgian institution to the effect that the form is exhaustive must be rejected.

I thus propose that the question raised by the Belgian Cour de Cassation should be answered as follows:

"The form provided for by Article 34 of Regulation No 4 of the Council of the European Economic Community of 3 December 1958 may be supplemented or explained by other information if that is necessary for the grant of an invalidity pension which in the absence of such other information could not be granted under national legislation."