

Form of order sought

The Commission claims that the Court should:

- declare that, by approving and maintaining in force the requirements for pension capital transfer as set out in Articles 19a(1)(d) and 19b(1) and (2) of the Wet op de Loonbelasting 1964 (Law on wages tax); Article 40c of the Uitvoeringsregeling Invorderingswet (Decree implementing the Law on the collection of taxes); Article 10d(3) of the Uitvoeringsbesluit Loonbelasting 1965 (Decision implementing the Law on wages tax), as well as Annex IV to Decision DGB2012/7010M on international aspect of pensions, the Kingdom of the Netherlands has failed to fulfil the obligations incumbent on that Member State under Articles 45, 56 and 63 TFEU;
- order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The Commission is of the view that the Netherlands legislation on the requirements for transfer of pension capital transfers accrued in the so-called 'second pillar', the supplementary pension accrual via the employer, is incompatible with the free movement of workers, services and capital. Although those requirements are applicable to domestic and foreign transfers, they are more easily fulfilled by domestic pension providers than for foreign pension providers that wish to provide in their own Member State of establishment pension services to employees working there who have previously accrued pension capital in the Netherlands. In the event of failure to comply with the requirements set by the legislation, the pension capitals accrued in the Netherlands are included in the levy.

**Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 11 July 2022 —
BM v LO**

(Case C-462/22)

(2022/C 359/59)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant: BM

Respondent in the appeal on a point of law: LO

Question referred

Does the waiting period of one year or six months under the fifth and sixth indents, respectively, of Article 3(1)(a) of Regulation (EC) No 2201/2003 ⁽¹⁾ begin to run with respect to the applicant only upon establishment of his or her habitual residence in the Member State of the court seised, or is it sufficient if, at the beginning of the relevant waiting period, the applicant initially has mere de facto residence in the Member State of the court seised, and his or her residence becomes established as habitual residence only subsequently, in the period before the application was made?

⁽¹⁾ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).