



## Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

4 June 2015\*

(Reference for a preliminary ruling — Social security for migrant workers — Regulation (EEC) No 1408/71 — Article 27 — Annex VI, section R, point 1(a) and (b) — Concept of pensions payable under the legislation of two or more Member States — Benefits in kind — Retroactive award of a pension under the legislation of the Member State of residence — Enjoyment of health care benefits conditional on the taking out of compulsory health care insurance — Certificate of non-insurance under the legislation on compulsory health care insurance of the Member State of residence — No subsequent obligation to pay contributions to that Member State — Retroactive withdrawal of the certificate — No possibility of retroactive affiliation to compulsory health care insurance — Interruption of cover against the risk of sickness by such insurance — Effectiveness of Regulation No 1408/71)

In Case C-543/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Centrale Raad van Beroep (Netherlands), made by decision of 15 October 2013, received at the Court on 17 October 2013, in the proceedings

**Raad van bestuur van de Sociale verzekeringsbank**

v

**E. Fischer-Lintjens,**

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh (Rapporteur), C. Toader, E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Raad van bestuur van de Sociale verzekeringsbank, by H. van der Most, acting as Agent,
- the Netherlands Government, by M. de Ree and M. Bulterman, acting as Agents,
- the German Government, by T. Henze and A. Wiedmann, acting as Agents,

\* Language of the case: Dutch.

— the European Commission, by D. Martin and M. van Beek, acting as Agents,  
after hearing the Opinion of the Advocate General at the sitting on 12 February 2015,  
gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 27 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), as amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006 (OJ 2006 L 392, p. 1), ('Regulation No 1408/71') and of section R, point 1(a) and (b), of Annex VI to Regulation No 1408/71.
- 2 The request has been made in proceedings between the Raad van bestuur van de Sociale verzekeringsbank (Board of Management of the Social Insurance Fund, 'the SVB') and Ms Fischer-Lintjens concerning the withdrawal by the College voor zorgverzekeringen (Health Care Insurance Board, 'the CVZ'), an entity whose powers are now exercised by the SVB, of a certificate to show that Ms Fischer-Lintjens was not required to take out Netherlands health care insurance and consequently that no contributions were payable by her ('the certificate of non-insurance').

### Legal context

#### *EU law*

- 3 Article 27 of Regulation No 1408/71 appears in Title III, 'Special provisions relating to the various categories of benefits', Chapter I, 'Sickness and maternity'. That article, which is headed 'Pensions payable under the legislation of several States where there is a right to benefits in the country of residence', reads as follows:  
  
'A pensioner who is entitled to draw pensions under the legislation of two or more Member States, of which one is that of the Member State in whose territory he resides, and who is entitled to benefits under the legislation of the latter Member State, taking account where appropriate of the provisions of Article 18 and Annex VI, shall, with the members of his family, receive such benefits from the institution of the place of residence and at the expense of that institution as though the person concerned were a pensioner whose pension was payable solely under the legislation of the latter Member State.'
- 4 Also in Chapter I of Title III, Article 28, 'Pensions payable under the legislation of one or more States, in cases where there is no right to benefits in the country of residence', lays down rules relating to the provision and cost of benefits in the case of a pensioner who is entitled to a pension under the legislation of one Member State or to pensions under the legislation of two or more Member States and who is not entitled to benefits under the legislation of the Member State in whose territory he resides, but receives such benefits for himself and for members of his family, in so far as he would be entitled thereto under the legislation of the Member State or of at least one of the Member States competent in respect of pensions if he were resident in the territory of that State.

- 5 Article 84a of Regulation No 1408/71, ‘Relations between the institutions and the persons covered by this Regulation’, provides:

‘1. The institutions and persons covered by this Regulation shall have a duty of mutual information and cooperation to ensure the correct implementation of this Regulation.

The institutions, in accordance with the principle of good administration, shall respond to all queries within a reasonable period of time and shall in this connection provide the persons concerned with any information required for exercising the rights conferred on them by this Regulation.

The persons concerned shall inform the institutions of the competent State and of the State of residence as soon as possible of any changes in their personal or family situation which affect their right to benefits under this Regulation.

2. Failure to respect the obligation of information referred to in paragraph 1, third subparagraph, may result in the application of proportionate measures in accordance with national law. Nevertheless, these measures shall be equivalent to those applicable to similar situations under domestic law and shall not make it impossible or excessively difficult in practice for claimants to exercise the rights conferred on them by this Regulation.

...’

- 6 Annex VI to that regulation, ‘Special procedures for applying the legislations of certain Member States’, includes section R, point 1 of which, ‘Health care insurance’, provides in indents (a) and (b) that:

‘(a) As regards entitlement to benefits in kind under Netherlands legislation, persons entitled to benefits in kind for the purpose of the implementation of Chapters 1 and 4 of Title III of this Regulation shall mean:

- (i) persons who, under Article 2 of the [Law on health care insurance (Zorgverzekeringswet, “the Zvw”)], are obliged to take out insurance under a health care insurer,

...

(b) The persons referred to in point (a)(i) must, in accordance with the provisions of the [Zvw], take out insurance with a health care insurer ...’

#### *Netherlands law*

#### The General Law on old-age insurance

- 7 Article 14(1) of the General Law on old-age insurance (Algemene ouderdomswet, ‘the AOW’) provides:

‘An old-age pension, and an increase in the old-age pension, shall be granted on application by the Sociale verzekeringsbank.’

- 8 In accordance with Article 16 of the AOW:

‘1. The old-age pension commences on the first day of the month during which the person concerned meets the conditions laid down for entitlement to an old-age pension.

2. By way of derogation from paragraph 1, an old-age pension cannot commence earlier than one year before the first day of the month in which the application was submitted or in which it was automatically granted. The Sociale verzekeringsbank may, in special cases, derogate from the preceding sentence.'

The General Law on exceptional medical costs

- 9 Article 5(1) and (4) of the General Law on exceptional medical costs (Algemene wet bijzondere ziektekosten, 'the AWBZ') provides:

'1. An insured person for the purpose of the present provisions is a person who:

- (a) is a resident;
- (b) is not a resident but is subject to income tax in respect of salaried work carried out in the Netherlands.

...

4. By way of derogation from paragraph 1, the category of insured persons may be extended or restricted by or pursuant to general administrative measures.'

- 10 Article 5c of the AWBZ reads as follows:

'The Sociale verzekeringsbank shall determine, on its own initiative or on application, whether a natural person satisfies the conditions laid down in Article 5 or 5b or pursuant to those articles for being an insured person in accordance with this law.'

The 1999 Decree on the extension and restriction of the category of insured persons in respect of national insurance

- 11 Article 21(1) and (6) of the Decree on the extension and restriction of the category of insured persons in respect of national insurance (Besluit uitbreiding en beperking kring verzekerden volksverzekeringen (Decree on the extension and restriction of the category of insured persons in respect of national insurance) 1999 ('KB 746') provides:

'1. A person is not an insured person under the [AWBZ] if he lives in the Netherlands but, by the application of a regulation of the Council of the European Communities or of an agreement on social security concluded by the Netherlands with one or more other States, is entitled to claim benefits in kind in the Netherlands which are granted in principle at the expense of another Member State of the European Union or another State party to the Agreement on the European Economic Area or a State with which the Netherlands has concluded an agreement on social security.

...

6. The Sociale verzekeringsbank shall, on application by a person referred to in paragraph 1, 2, 3 or 4, issue a certificate that he is not insured.'

The Law on health care insurance

12 In accordance with Article 2(1) of the Zvw:

‘A person who is automatically insured under the AWBZ and the legislation based thereon is obliged to insure himself or have himself insured by a health care insurance policy against the risk referred to in Article 10.’

13 Article 3(1) of the Zvw provides:

‘A health care insurer is obliged to conclude on request, for the benefit of any person subject to compulsory insurance living in its area of operation, or for the benefit of any person subject to compulsory insurance living abroad, a health care insurance policy.’

14 Article 5(1) and (5) of the Zvw provides:

‘1. The health care insurance commences on the day on which the health care insurer received the request referred to in Article 3(1) ...

...

5. The health care insurance operates retroactively, if necessary by way of derogation from Article 925(1) of Book 7 of the Civil Code:

(a) if it commences within four months of the insurance obligation arising, up to and including the day on which that obligation arose.

...’

**The dispute in the main proceedings and the questions referred for a preliminary ruling**

15 Ms Fischer-Lintjens lived in the Netherlands from 1 December 1934, the date of her birth, to 1 September 1970. She then lived in Germany until 1 May 2006, when she returned to the Netherlands, where she has lived since then.

16 From October 2004 Ms Fischer-Lintjens received a widow’s pension from the competent German institution. After leaving Germany to settle in the Netherlands in 2006, she registered by means of an E 121 form with the Netherlands health care insurer CZ, and from 1 June 2006 was able, under Article 28 of Regulation No 1408/71, to receive benefits in kind in the Netherlands with the cost borne by the competent German institution. She paid contributions in Germany for her health care insurance.

17 On 20 October 2006 Ms Fischer-Lintjens obtained from the CVZ a certificate of non-insurance for the purposes of the AWBZ, intended to demonstrate to the Netherlands authorities responsible for levying contributions that no contributions were due in the Netherlands. She stated on the form she had to complete in order to obtain the certificate that she did not receive any pensions or benefits in kind under Netherlands legislation but a pension under German legislation.

18 The certificate was valid, if circumstances did not change, from 1 June 2006 to 31 December 2010.

- 19 Although Ms Fischer-Lintjens reached the age of 65 and became entitled to a pension in the Netherlands under the AOW on 1 December 1999, she did not apply for that pension until May 2007. According to the referring court, she had, prior to submitting her application, wrongly believed that she was not entitled to a pension.
- 20 By decision of 8 November 2007, amended on 24 April 2008, the SVB awarded and paid Ms Fischer-Lintjens, in accordance with Article 16(2) of the AOW, a pension with retroactive effect from one year before the first day of the month in which she made the application, that is, from 1 May 2006.
- 21 Ms Fischer-Lintjens did not inform CZ or the CVZ or the German health care insurance institution of that changed situation until October 2010.
- 22 On 21 October 2010 Ms Fischer-Lintjens filled in a form sent by the CVZ in connection with her application for extension of her certificate of non-insurance, stating that from 1 May 2006 she had been in receipt of an old-age pension under the AOW.
- 23 By decision of 2 November 2010, the CVZ informed Ms Fischer-Lintjens that she was required to be insured under the AWBZ and the Zvw and should therefore pay contributions in the Netherlands, as she was no longer in any of the situations referred to in Article 21(1) of KB 746 and had consequently been subject to an insurance obligation from June 2006. The CVZ thereupon withdrew her certificate of non-insurance ('the withdrawal decision') and CZ cancelled her health care insurance policy. The withdrawal and the cancellation both had retroactive effect from 1 June 2006.
- 24 The German health care insurance institution then refunded contributions of over EUR 5 000 which Ms Fischer-Lintjens had paid in Germany from 1 June 2006.
- 25 CZ subsequently claimed from Ms Fischer-Lintjens the health care costs of more than EUR 11 000 which it had reimbursed to the German institution. According to the CVZ, in accordance with Article 5(5) of the Zvw, health care insurance can take effect retroactively only if it is concluded within four months from the coming into being of the insurance obligation. Ms Fischer-Lintjens therefore had to pay the health care costs reimbursed to the German institution for the period during which she had not been covered by health care insurance, namely between June 2006 and 1 July 2010, from which latter date she had Netherlands health care insurance.
- 26 On 7 December 2010 Ms Fischer-Lintjens made a complaint to the CVZ against the withdrawal decision.
- 27 Since 15 March 2011 the SVB has been the competent body for granting exemptions from the insurance obligation under the AWBZ and issuing certificates of non-insurance. Certificates issued before that date by the CVZ are deemed to have been issued by the SVB.
- 28 By decision of 21 April 2011, the SVB ruled that Ms Fischer-Lintjens's complaint against the withdrawal decision was unfounded. Her appeal against the SVB's decision was allowed by judgment of the Rechtbank Roermond (District Court, Roermond) of 17 January 2012. According to that court, the certificate of non-insurance which she had received was intended to produce legal effects which could not be cancelled by the withdrawal of the certificate.
- 29 The SVB appealed against that judgment to the Centrale Raad van Beroep (Higher Social Security Court), arguing that a certificate of non-insurance was of a purely declaratory nature, like an E 121 form. In its view, no legal consequences may be derived from the national rules in derogation from the consequences of the application of Regulation No 1408/71.



30 The Centrale Raad van Beroep considers that the SVB had power to withdraw the certificate of non-insurance with retroactive effect, but that in withdrawing it the SVB had not taken sufficient account of Ms Fischer-Lintjens's interests. That court considers that it follows in particular from the principle of legal certainty that actual competence to award pensions and bear the cost of benefits in kind does not arise until the date of the decision to award the pension sought, by which it is established that the person concerned is indeed entitled to it. For that reason, it raises the question of the determination of the date on which the pension at issue in the main proceedings actually became 'payable' within the meaning of Article 27 of Regulation No 1408/71 to Ms Fischer-Lintjens, since, in its opinion, if that article is applicable retroactively, this will in principle give rise to various retroactive legal consequences, including, in the present case, the obligation to hold Netherlands health care insurance.

31 In those circumstances the Centrale Raad van Beroep decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- (1) Must the term "payable", as used in Article 27 et seq. of Regulation (EEC) No 1408/71, be interpreted as meaning that the decisive factor for the purpose of determining the point in time from which a pension is payable is the date of the decision to make an award, after which the pension is paid, or the commencement date of the pension awarded with retroactive effect?
- (2) If the term "payable" refers to the commencement date of the pension awarded with retroactive effect:

Can this be reconciled with the fact that the person entitled to receive the pension who comes under Article 27 of Regulation No 1408/71 cannot, under Netherlands legislation, take out health care insurance with the same retroactive effect?

### **Consideration of the questions referred**

32 It must be noted at the outset that the questions are asked in the particular circumstances of the dispute in the main proceedings, in which a Netherlands pension was granted to Ms Fischer-Lintjens in November 2007 with retroactive effect from 1 May 2006 and Ms Fischer-Lintjens was able, by the certificate of non-insurance of 20 October 2006, to prove to the Netherlands authority responsible for levying contributions that she was not bound by the obligation, under Article 2(1) of the *Zvw* in conjunction with section R, point 1(a), of Annex VI to Regulation No 1408/71, to take out Netherlands compulsory health care insurance, as she fell within the scope of Article 28 of that regulation and was thus entitled to sickness benefits in the Netherlands at the expense of the competent German institution. Her certificate of non-insurance was, however, withdrawn on 2 November 2010 with retroactive effect from 1 June 2006.

33 In this context, it must be recalled that persons entitled to pensions under the legislation of two or more Member States, including the legislation of the Netherlands where they reside, must, in accordance with section R, point 1(a) and (b), of Annex VI to Regulation No 1408/71, in order to be entitled to receive, at the expense of the competent Netherlands institution, sickness benefits under Netherlands legislation in accordance with Article 27 of that regulation, be insured with a health care insurance institution in accordance with Article 2 of the *Zvw*. It is common ground that, under Article 5(1) and (5) of the *Zvw*, that insurance can have retroactive effect only if it is taken out within four months from the insurance obligation arising.

34 According to the referring court, it is thus necessary to determine the date from which Ms Fischer-Lintjens was entitled to those benefits in the Netherlands at the expense of the competent Netherlands institution, which corresponds to the date on which she ceased to fall within Article 28 of Regulation No 1408/71 and instead fell within Article 27 of that regulation. However, the court states

that, whatever that date may be, the application of Articles 2 and 5(5) of the Zvw could deprive her of health care insurance for a certain period, in so far as those provisions prevent the taking out of such insurance with retroactive effect in circumstances such as those in which she finds herself. That court observes, however, that it may be considered that the interruption in Ms Fischer-Lintjens's health care insurance between 8 November 2007, the date of the first payment to her of the Netherlands pension, and 1 July 2010, the date on which she became affiliated to Netherlands health care insurance, is attributable solely to her delay in taking out a policy with a Netherlands insurer. She should therefore bear the consequent loss herself.

- 35 Consequently, by its questions, which should be considered together, the referring court is essentially asking whether Article 27 of Regulation No 1408/71, in conjunction with section R, point 1(a) and (b), of Annex VI to that regulation, must be interpreted as precluding, in circumstances such as those at issue in the main proceedings, legislation of a Member State which does not allow the recipient of a pension granted by that Member State with retroactive effect of one year to become affiliated to compulsory health care insurance with the same retroactive effect.
- 36 It must therefore be determined from which date, in the circumstances at issue in the main proceedings, the Netherlands became competent by virtue of Article 27 of Regulation No 1408/71 with respect to a pensioner such as Ms Fischer-Lintjens.
- 37 The provisions of that regulation which determine the applicable legislation form a complete system of conflict rules, the effect of which is to divest the national legislatures of the power to determine the ambit and the conditions for the application of their national legislation on the subject so far as the persons who are subject thereto and the territory within which the provisions of national law take effect are concerned (see, in particular, judgment in *van Delft and Others*, C-345/09, EU:C:2010:610, paragraph 51 and the case-law cited).
- 38 Since the conflict rules laid down by Regulation No 1408/71 are thus mandatory for the Member States, the Court has previously held that *a fortiori* it cannot be accepted that insured persons falling within the scope of those rules can counteract their effects by being able to elect to withdraw from their application. The application of the system of conflict rules established by that regulation depends solely on the objective situation of the worker concerned (see, to that effect, judgment in *van Delft and Others*, C-345/09, EU:C:2010:610, paragraph 52 and the case-law cited).
- 39 It should also be recalled that, according to settled case-law of the Court, the purpose of the provisions of that regulation which determine the applicable legislation is not only to prevent the concurrent application of a number of national legislative systems and the complications which might ensue, but also to ensure that persons covered by the regulation are not left without social security cover because there is no legislation which is applicable to them (see, to that effect, judgment in *Mulders*, C-548/11, EU:C:2013:249, paragraph 39 and the case-law cited).
- 40 It follows, as the Advocate General observes in point 41 of his Opinion, that one of the objectives of the conflict rules laid down by Regulation No 1408/71 is to ensure that all insured persons falling within its scope enjoy continuous cover without that continuity being affected by discretionary choices of individuals or of the competent authorities of the Member States.
- 41 Article 27 of Regulation No 1408/71 concerns a pensioner who is entitled to draw pensions under the legislation of two or more Member States, including that of his Member State of residence, and is entitled to sickness and maternity benefits in that Member State. That article, in conjunction with Article 28 of the regulation, has the purpose of determining, first, the institution responsible for providing persons entitled to a pension with those sickness and maternity benefits and, secondly, the institution responsible for bearing the cost (see, to that effect, judgment in *Rundgren*, C-389/99, EU:C:2001:264, paragraphs 43 and 44).



- 42 The system introduced by those articles thus establishes a connection between the competence to provide pensions and the obligation to bear the costs of benefits in kind, that obligation consequently being incidental to an actual competence in respect of pensions. The cost of benefits in kind cannot therefore be assigned to the institution of a Member State which has only a hypothetical competence in respect of pensions. It follows that Article 27 of Regulation No 1408/71, like Article 28 of the regulation, when it refers to a pension payable, refers to a pension which is actually paid to the person concerned (see, to that effect, judgment in *Rundgren*, C-389/99, EU:C:2001:264, paragraph 47).
- 43 The Netherlands pension of a person in Ms Fischer-Lintjens's situation must therefore be regarded as payable within the meaning of Article 27 of Regulation No 1408/71 from the commencement of the period in respect of which that pension was actually paid to that person, whatever the date on which the entitlement to that pension was formally confirmed. Such a pension is therefore payable for the whole of that period, including, if appropriate, where the period commences before the date of the decision awarding the pension.
- 44 In the present case, it is common ground that the pension at issue in the main proceedings was actually paid to Ms Fischer-Lintjens, under Netherlands legislation, in respect of the period starting on 1 May 2006. Consequently, from that date it had to be classified as 'payable' within the meaning of Article 27 of Regulation No 1408/71 for the award of benefits to Ms Fischer-Lintjens.
- 45 Furthermore, as the German Government observed in its written observations, any other interpretation of the term 'payable' within the meaning of Article 27 would make the temporal applicability of the competence of a Member State in respect of benefits due under that regulation depend on the speed with which national administrations deal with requests for pensions, which would run counter to one of the objectives of that regulation, namely, as the Court has found in paragraph 40 above, to ensure that all insured persons falling within its scope enjoy continuous cover.
- 46 In addition, it appears from the materials before the Court, which are not contested, that following the retroactive withdrawal of the certificate of non-insurance Ms Fischer-Lintjens no longer had health care insurance for the period from June 2006 to 1 July 2010, although she had previously paid health care insurance contributions in Germany for that period, which were subsequently reimbursed to her as a result of the withdrawal decision.
- 47 On this point, the Netherlands Government explains in its written observations that any retroactive effect of Netherlands health care insurance is in principle excluded by the Netherlands legislation at issue in the main proceedings, having regard to the purpose of insurance, which is to guard against future damage which has not yet materialised at the time when the policy is taken out, and to the objective of encouraging persons required to take out an insurance policy under Netherlands law to do so as soon as possible. The absence of retroactive effect ensures solidarity, which is at the basis of the health care insurance system, and prevents abuse. However, despite that general principle of exclusion, the Netherlands legislature provided for a limited exception under which, where health care insurance commences within four months of the insurance obligation arising, it has retroactive effect up to the day on which that obligation arose. Where that effect applies, which cannot be the case in the dispute in the main proceedings because Ms Fischer-Lintjens's insurance obligation arose on 1 May 2006, it is thus limited to four months.
- 48 In this regard, it may indeed be legitimate for a Member State to restrict the possibility of taking out health care insurance with retroactive effect, with the aim of encouraging persons who are obliged to take out such insurance to do so as quickly as possible. Thus the Court has previously held that an obligation to pay contributions because of the existence of a right to benefits, even if those benefits are not actually received, is inherent in the principle of solidarity which is implemented by national social security schemes, since in the absence of such an obligation the persons concerned might be induced to wait for the risk to materialise before contributing to the financing of the system (see, to that effect, judgment in *van Delft and Others*, C-345/09, EU:C:2010:610, paragraph 75).

- 49 However, the conditions of affiliation to the social security schemes of the Member States, the organisation of which is within their powers, must comply with EU law and must not have the effect of excluding from the scope of national legislation, such as that at issue in the main proceedings, persons to whom that legislation applies pursuant to Regulation No 1408/71 (see, to that effect, judgments in *Kits van Heijningen*, C-2/89, EU:C:1990:183, paragraph 20, and *Salemink*, C-347/10, EU:C:2012:17, paragraphs 38 to 40).
- 50 It must be stated that, as the Advocate General observes in substance in points 53 and 54 of his Opinion, national legislation such as that at issue in the main proceedings has the effect that a person who is awarded by the authorities of the Member State of residence, pursuant to Article 27 of Regulation No 1408/71, payment of a pension with retroactive effect of more than four months from the date of the decision to award it subsequently finds it impossible to comply with his legal obligations and to take out, in that Member State, health care insurance within a period allowing him to enjoy retroactive effect of more than four months, even though he has hitherto had the cost of his health care borne by the competent institution of another Member State.
- 51 Thus it is not disputed, in the present case, that, even if Ms Fischer-Lintjens had informed the competent bodies in the Netherlands that she was in receipt of a German pension on 8 November 2007, the date on which the SVB adopted the decision that she was entitled to a pension in the Netherlands with retroactive effect from 1 May 2006, because of the restriction in Article 5(5) of the Zvw she could not have become affiliated to compulsory health care insurance covering her from 1 May 2006. In the circumstances of the main proceedings, it is apparent that it would thus have been impossible, in any event, for Ms Fischer-Lintjens to avoid an interruption in cover of such insurance.
- 52 However, in accordance with the case-law referred to in paragraph 39 above, an insured person such as Ms Fischer-Lintjens who falls within the scope of Regulation No 1408/71 cannot be left without social security cover because there is no legislation which is applicable to him (see, by analogy, judgment in *Kuusijärvi*, C-275/96, EU:C:1998:279, paragraph 28).
- 53 It follows, as the Advocate General observes in points 55 and 56 of his Opinion, that a restriction laid down by national legislation such as that at issue in the main proceedings, the result of which is that persons in Ms Fischer-Lintjens's situation are unable to comply with their obligations under Article 27 of Regulation No 1408/71 and section R, point 1(a) and (b), of Annex VI to that regulation, interferes with the effectiveness of the system of conflict rules established by that regulation and with the obligations of insured persons under the regulation. In particular, the effectiveness of the system, which is mandatory both for the Member States and for the persons concerned, cannot be guaranteed if those States, through their national legislation, are able to make it impossible for persons such as Ms Fischer-Lintjens to comply fully with their obligations under Regulation No 1408/71.
- 54 In this respect, the argument of the Netherlands Government that the interruption of Ms Fischer-Lintjens's health care insurance, in particular for the period from November 2007 to July 2010, resulted solely from her failure to inform the competent Netherlands institution of the change to her pension rights cannot be accepted.
- 55 Article 84a(1) of Regulation No 1408/71 admittedly lays down an obligation of mutual information and cooperation on the part of the competent institutions and the persons covered by the regulation. While those persons are obliged to inform those institutions as soon as possible of any changes in their personal or family situation which affect their right to benefits under Regulation No 1408/71, the institutions are obliged to provide, in response to those persons' queries concerning the regulation, any information required for exercising the rights conferred on them by the regulation.
- 56 That information could include, if appropriate, sufficient information to enable a person, in circumstances such as those at issue in the main proceedings, to understand that he was under an obligation to take out health care insurance in the Netherlands.

- 57 It must be noted, however, that under Article 84a(2) of Regulation No 1408/71, a failure to respect the obligation of information referred to in the third subparagraph of Article 84a(1) may result only in the application of proportionate measures in accordance with national law, which must be equivalent to those applicable to similar situations under domestic law and must not make it impossible or excessively difficult in practice for claimants to exercise the rights conferred on them by that regulation.
- 58 That cannot be the case if the application of national legislation has the effect of depriving a person in Ms Fischer-Lintjens's situation of all social security cover for a certain period without all the relevant circumstances, in particular those relating to personal situation, such as age, state of health, and absence from the Netherlands for an extended period, being taken into account. Moreover, the fact that Ms Fischer-Lintjens paid contributions for health care insurance in Germany from November 2007 to October 2010 is of particular importance.
- 59 In the light of all the above considerations, the answer to the questions referred for a preliminary ruling is that Article 27 of Regulation No 1408/71, in conjunction with section R, point 1(a) and (b), of Annex VI to that regulation, must be interpreted as meaning that the pension of a person entitled must, in circumstances such as those at issue in the main proceedings, be regarded as payable from the commencement of the period in respect of which that pension was actually paid to that person, whatever the date on which the entitlement to that pension was formally confirmed, including, if appropriate, where the period commences before the date of the decision awarding the pension. Articles 27 and 84a of Regulation No 1408/71, in conjunction with section R, point 1(a) and (b) of Annex VI to that regulation, must be interpreted as precluding, in circumstances such as those at issue in the main proceedings, legislation of a Member State which does not allow the recipient of a pension awarded by that Member State with retroactive effect of one year to become affiliated to compulsory health care insurance with the same retroactive effect, and which has the effect of depriving that person of all social security cover without all the relevant circumstances, in particular those relating to that person's personal situation, being taken into account.

### Costs

- 60 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

**Article 27 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006, in conjunction with section R, point 1(a) and (b), of Annex VI to Regulation No 1408/71, must be interpreted as meaning that the pension of a person entitled must, in circumstances such as those at issue in the main proceedings, be regarded as payable from the commencement of the period in respect of which that pension was actually paid to that person, whatever the date on which the entitlement to that pension was formally confirmed, including, if appropriate, where the period commences before the date of the decision awarding the pension.**

**Articles 27 and 84a of Regulation No 1408/71, as amended and updated by Regulation No 118/97, as amended by Regulation No 1992/2006, in conjunction with section R, point 1(a) and (b) of Annex VI to that regulation, must be interpreted as precluding, in circumstances such as those at issue in the main proceedings, legislation of a Member State which does not**

**allow the recipient of a pension awarded by that Member State with retroactive effect of one year to become affiliated to compulsory health care insurance with the same retroactive effect, and which has the effect of depriving that person of all social security cover without all the relevant circumstances, in particular those relating to that person's personal situation, being taken into account.**

[Signatures]