



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

12 February 2015\*

(Reference for a preliminary ruling — Social security — Regulation (EEC) No 1408/71 — Old age and survivors' insurance — Article 46a(3)(c) — Award of benefits — National rules against overlapping — Derogation — Concept of 'voluntary insurance or continued optional insurance' — National pension under a compulsory insurance scheme — Possibility of requesting an exemption from affiliation for a certain period — Scope of the statement issued by the competent institution of another Member State — Regulation (EEC) No 574/72 — Article 47)

In Case C-114/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the arbeidshof te Antwerpen (Belgium), made by decision of 4 March 2013, received at the Court on 11 March 2013, in the proceedings

**Theodora Hendrika Bouman**

v

**Rijksdienst voor Pensioenen,**

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet, E. Levits, M. Berger (Rapporteur) and F. Biltgen, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

- Mrs Bouman, by W. van Ophuizen, advocaat,
- the Belgian Government, by M. Jacobs and L. Van den Broeck, acting as Agents, and T. Jansen, advocaat,
- the European Commission, by M. van Beek and V. Kreuzschitz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 March 2014,

gives the following

\* Language of the case: Dutch.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 46a(3)(c) 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').
- 2 The request has been made in proceedings between Mrs Bouman and the Rijksdienst voor Pensioenen (National Pensions Office, 'the Rijksdienst') concerning the review, in 2009, of the Rijksdienst's decision dated 10 July 1969 granting Mrs Bouman a survivor's pension, and the Rijksdienst's claim for recovery of benefits wrongly paid.

### Legal context

#### *EU law*

- 3 Article 15 of Regulation No 1408/71, entitled 'Rules concerning voluntary insurance or optional continued insurance', states:
  - '1. Articles 13 to 14d shall not apply to voluntary insurance or to optional continued insurance unless, in respect of one of the branches referred to in Article 4, there exists in any Member State only a voluntary scheme of insurance.
  2. Where application of the legislations of two or more Member States entails overlapping of insurance:
    - under a compulsory insurance scheme and one or more voluntary or optional continued insurance schemes, the person concerned shall be subject exclusively to the compulsory insurance scheme;
    - under two or more voluntary or optional continued insurance schemes, the person concerned may join only the voluntary or optional continued insurance scheme for which he has opted.
  3. However, in respect of invalidity, old age and death (pensions), the person concerned may join the voluntary or optional continued insurance scheme of a Member State, even if he is compulsorily subject to the legislation of another Member State, to the extent that such overlapping is explicitly or implicitly admitted in the first Member State.'
- 4 Article 46a of Regulation No 1408/71, entitled 'General provisions relating to reduction, suspension or withdrawal applicable to benefits in respect of invalidity, old age or survivors under the legislations of the Member States', provides:
  - '1. For the purposes of the Chapter, overlapping of benefits of the same kind shall have the following meaning: all overlapping of benefits in respect of invalidity, old age and survivors calculated or provided on the basis of periods of insurance and/or residence completed by one and the same person.
  2. For the purposes of this Chapter, overlapping of benefits of different kinds means all overlapping of benefits that cannot be regarded as being of the same kind within the meaning of paragraph 1.

3. The following rules shall be applicable for the application of provisions on reduction, suspension or withdrawal laid down by the legislation of a Member State in the case of overlapping of a benefit in respect of invalidity, old age or survivors with a benefit of the same kind or a benefit of a different kind or with other income:

- (a) account shall be taken of the benefits acquired under the legislation of another Member State or of other income acquired in another Member State only where the legislation of the first Member State provides for the taking into account of benefits or income acquired abroad;
- (b) account shall be taken of the amount of benefits to be granted by another Member State before deductions of taxes, social security contributions and other individual levies or deductions;
- (c) no account shall be taken of the amount of benefits acquired under the legislation of another Member State which are awarded on the basis of voluntary insurance or continued optional insurance;
- (d) where provisions on reduction, suspension or withdrawal are applicable under the legislation of only one Member State on account of the fact that the person concerned receives benefits of a similar or different kind payable under the legislation of other Member States or other income acquired within the territory of other Member States, the benefit payable under the legislation of the first Member State may be reduced only within the limit of the amount of the benefits payable under the legislation or the income acquired within the territory of other Member States.'

- 5 Article 47 of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ 1972 L 74, p. 1), as amended by Council Regulation (EEC) No 1248/92 of 30 April 1992 (OJ 1992 L 136, p. 7) ('Regulation No 574/72') states:

'Calculation of the amounts due corresponding to the periods of voluntary or optional continued insurance

In accordance with the legislation it applies, the institution of each Member State shall calculate the amount corresponding to the periods of voluntary or optional continued insurance which, under Article 46a(3)(c) of the Regulation, is not subject to the provisions for withdrawal, reduction or suspension of another Member State.'

#### *National law*

##### Belgian law

- 6 Article 52(1)(1) of the Royal Decree of 21 December 1967 laying down general rules concerning retirement and survivors' pensions for employed persons (Koninklijk Besluit van 21 december 1967 tot vaststelling van het algemeen reglement betreffende het rust- en overlevingspensioen voor werknemers, *Belgisch Staatsblad*, 16 January 1968, p. 441) provides:

'Where the surviving spouse can claim both a survivor's pension under the pension scheme for employed persons and one or more retirement pensions, or any other benefit taking the place thereof under the pension scheme for employed persons or one or more other pension schemes, the survivor's pension may be aggregated with the said retirement pensions only up to a sum equal to 110% of the amount of the survivor's pension which would have been awarded to the surviving spouse for a complete contributions record.'

## Netherlands law

- 7 The General Law on Old Age Pensions (Algemene Ouderdomswet, Stb. 1956, 281, 'the AOW') provides for compulsory insurance, inter alia, for all Netherlands nationals residing in the territory of the Kingdom of the Netherlands and who have not yet reached 65 years of age. A social contribution not linked to income has to be paid in that regard. However, there are, in a limited number of cases, exceptions to that basic rule and the affiliated person may request an exemption from compulsory insurance.
- 8 Thus, Article 22 of the Royal Decree of 24 December 1998 on the restriction and extension of the category of insured persons in respect of social insurance (Besluit beperking en uitbreiding kring verzekerden volksverzekeringen, Stb.1998, 746, 'the Dutch Decree') states:

'For as long as he is not employed in the Netherlands, a person who is residing in the Netherlands and who is entitled to a benefit under a foreign statutory or extra-statutory social security scheme or under a scheme operated by an international organisation shall be exempted, at his request, by the national Social Insurance Office, from having to subscribe to insurance under the General Law on Old Age Pensions (Algemene Ouderdomswet), the General Law on Insurance for Surviving Dependants (Algemene nabestaandenwet) and the General Law on Family Allowances (Algemene kinderbijslagwet), as long as he:

- (a) is permanently entitled only to a benefit as referred to in the opening words of this provision and the monthly amount of that benefit is equal to at least 70% of the sum referred to in Article 8(1)(a) of the Minimum Wage and Minimum Holiday Allowance Act (Wet minimumloon en minimumvakantiebijslag); or
- (b) is entitled, in addition to the benefit referred to in subparagraph (a) above, to a Netherlands social security benefit and the total monthly amount of that benefit and the foreign statutory benefit or extra-statutory benefit or the international organisation benefit is equal to at least 70% of the sum referred to in Article 8(1)(a) of the Minimum Wage and Minimum Holiday Allowance Act and the foreign benefit or international organisation benefit exceeds or is equal to the Netherlands benefit.'

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

- 9 Mrs Bouman, who was born on 2 June 1942, is a Netherlands citizen who lived in the Netherlands until 23 June 1957 and who, after that date, lived in Belgium until 3 February 1974.
- 10 Mrs Bouman was married to a Belgian national who died on 3 August 1968, and since 1 September 1969 she has been receiving a Belgian survivor's pension granted to her on the basis of a decision of the Rijksdienst of 10 July 1969.
- 11 Since that time, Mrs Bouman has never earned income of her own from any professional activity.
- 12 After her return to the Netherlands, Mrs Bouman paid contributions in order to build up a Netherlands old age pension under the AOW ('AOW pension').
- 13 In respect of the last four years prior to retirement age, that is, from 1 August 2003, Mrs Bouman requested and obtained, on the basis of Article 22 of the Dutch Decree, an exemption from affiliation under the AOW. She therefore ceased contributing to the Netherlands social security scheme, with the consequence that her pension contributions record under the AOW was not complete.

- 14 Since 1 June 2007, having reached retirement age, Mrs Bouman has been receiving a partial pension under the AOW.
- 15 By decision of 4 February 2009, the Rijksdienst informed Mrs Bouman of its decision to deduct, with effect from 1 June 2007, the AOW pension from her Belgian survivor's pension, and to bring proceedings for recovery of the sum overpaid in respect of the latter pension amounting to EUR 2 271.81.
- 16 On 4 May 2009, Mrs Bouman lodged an appeal against that decision with the arbeidsrechtbank te Antwerpen (Labour Court, Antwerp).
- 17 The Sociale Verzekeringsbank (national Social Insurance Office, 'SVB') was asked, as the competent authority, to determine whether the benefit Mrs Bouman receives is awarded on the basis of voluntary insurance or optional continued insurance.
- 18 By letters of 31 July 2009 and 15 June 2010, the SVB indicated that insurance under the AOW is, in principle, a compulsory insurance and that voluntary or optional continued insurance can be said to exist in two situations only. First, when, within one year after the commencement of the first compulsory insurance, there is a request to regularise historical uninsured periods or secondly, when, within one year after the end of the compulsory insurance, there is a request to voluntarily continue the insurance. In both cases, it is necessary to make a request to the SVB and, according to the SVB, there is no doubt that Mrs Bouman never made use of the option of voluntary or optional continued insurance.
- 19 The SVB concluded that Mrs Bouman's AOW pension did not result from any periods of voluntary insurance, but had been built up entirely from periods of compulsory insurance.
- 20 The arbeidsrechtbank te Antwerpen accordingly dismissed the appeal on the merits by judgment of 6 May 2010, and Mrs Bouman lodged an appeal against that judgment before the arbeidshof te Antwerpen (Higher Labour Court, Antwerp).
- 21 The arbeidshof te Antwerpen takes the view, on the basis of the judgment in *Knoch* (C-102/91, EU:C:1992:303, paragraph 53), that it is responsible for verifying the SVB's statement. It has doubts as to whether the SVB's position is consistent with Article 46a(3)(c) of Regulation No 1408/71 and it takes the view that it has jurisdiction to deal with that question in the context of the main proceedings.
- 22 In those circumstances, the arbeidshof te Antwerpen decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is the part of the [benefit under the AOW] which is paid to a Netherlands resident and which is based on an insurance period during which that Netherlands resident, simply by making an application, may refrain from joining the Netherlands scheme and thus from paying the premium, and in fact did so for a limited period, to be regarded as a benefit which is awarded on the basis of a voluntary or optional continued insurance within the meaning of Article 46a(3)(c) of Regulation No 1408/71, so that no account may be taken of it when applying the provision against overlapping as laid down in Article 52(1)(1) of [the Royal Decree of 21 December 1967 laying down general rules concerning retirement and survivors' pensions for employed persons]?'



## Consideration of the question referred

### *Preliminary observations*

- 23 In the present case, the interpretation of EU law is requested by a Member State court, which has doubts as to whether the position expressed in a document drawn up by the SVB, stating that Mrs Bouman's AOW pension does not result from any periods of voluntary insurance, but has been built up entirely from periods of compulsory insurance, is consistent with EU law.
- 24 As regards the question whether the institutions of another Member State are bound by such a statement drawn up in accordance with Article 47 of Regulation No 574/72, it should be recalled that the Court has held that a certified statement issued by the competent institution of a Member State specifying the periods of insurance or employment completed as an employed person under the legislation of that Member State does not constitute irrefutable proof for the competent institution of another Member State, nor for the courts of that Member State (see, to that effect, judgments in *Knoch*, EU:C:1992:303, paragraph 54, and *Adanez-Vega*, C-372/02, EU:C:2004:705, paragraphs 36 and 48).
- 25 It follows from that case-law that, since in the main proceedings the Belgian authorities are required to take account of the periods of insurance completed under the Netherlands legislation in order to determine the extent of Mrs Bouman's rights as they result from the application of the Belgian rules against overlapping, it is permissible for the referring court to review the content of the statement issued by the SVB with regard to its consistency with EU law, in particular, with the relevant rules laid down in Regulation No 1408/71.
- 26 That finding cannot be called into question on the ground that the Court has held that, as long as it has not been withdrawn or declared invalid by the authorities of the Member State which issued it, a statement drawn up pursuant to the provisions of Title III of Regulation No 574/72, entitled 'Implementation of the provisions of the regulations for determining the legislation applicable', that is, an E 101 certificate, is binding on the social security institutions and the courts of the Member State in which the workers concerned are posted, in so far as it certifies that those workers are affiliated to the social security scheme of the Member State in which their undertaking is established (see, to that effect, judgments in *FTS*, C-202/97, EU:C:2000:75, paragraph 55, and *Herbosch Kiere*, C-2/05, EU:C:2006:69, paragraphs 26 and 31).
- 27 In this connection, it should be stated that although limiting the review by the court of the validity of such an administrative document as regards the certification of the matters on the basis of which it was issued is justified for reasons of legal certainty (see judgment in *Herbosch Kiere*, EU:C:2006:69, paragraph 32), such an approach cannot automatically be applicable to a statement such as that drawn up by the SVB in the case in the main proceedings. When the authorities of the Member State in question have to determine the rights of a person concerned resulting from the legislation of that Member State, they must also have the possibility of reviewing all the relevant particulars in the documents drawn up by the authority of the Member State of origin that issued the statement.
- 28 In the light of the foregoing, the referring court may refer a question such as that in the main proceedings, which concerns the verification of whether a statement issued by an authority of another Member State in the context of the application of national rules against overlapping is consistent with EU law, to the Court for a preliminary ruling.

*Consideration of the question referred*

- 29 By its question, the referring court asks, in essence, whether Article 46a(3)(c) of Regulation No 1408/71 must be interpreted as encompassing the part of the benefit resulting from a period of insurance during which the person concerned had the right to obtain an exemption from affiliation to the compulsory insurance scheme, in a situation where such an affiliation, during the period in question, affects the extent of the social security benefit.
- 30 It should be noted that the concept of ‘voluntary insurance or continued optional insurance’ is not defined in Article 46a(3)(c) of Regulation No 1408/71, nor is it defined in other provisions of that regulation.
- 31 In that context, the meaning and scope of those terms must be determined, in accordance with settled case-law, taking into account both the terms in which the provision of EU law concerned is couched and its context (see, to that effect, judgments in *BLV Wohn- und Gewerbebau*, C-395/11, EU:C:2012:799, paragraph 25, and *Lundberg*, C-317/12, EU:C:2013:631, paragraph 18); the objectives pursued by the legislation of which it forms part (see, in particular, judgment in *Lundberg*, EU:C:2013:631, paragraph 19); and, in the circumstances of this case, the origins of that legislation (see, by analogy, judgment in *Pringle*, C-370/12, EU:C:2012:756, paragraph 135).
- 32 As regards the wording of Article 46a(3)(c) of Regulation No 1408/71, the Court has held that even though a comparison of the different language versions of the term ‘voluntary insurance or continued optional insurance’ reveals variations, they in any case show an intention to cover every type of insurance incorporating a voluntary element (see judgment in *Liégeois*, 93/76, EU:C:1977:50, paragraphs 12 to 14).
- 33 As regards the context of Article 46a(3)(c) of Regulation No 1408/71, it should be recalled that, according to settled case-law, Regulation No 1408/71 establishes a system for the coordination of national social security schemes and lays down, in Title II thereof, rules governing the determination of the legislation to be applied. Those rules are intended not only to ensure that the persons concerned are not left without social security cover because there is no legislation which is applicable to them, but also to ensure that the persons concerned are subject to the social security scheme of only one Member State, so that the complications arising from more than one system of national legislation being applicable are avoided (see judgment in *I*, C-255/13, EU:C:2014:1291, paragraph 40 and the case-law cited).
- 34 However, under Article 15(1) of Regulation No 1408/71, that system of coordination does not apply to voluntary insurance or to optional continued insurance unless, in respect of the branch concerned, there exists in any Member State only a voluntary scheme of insurance.
- 35 Furthermore, it is not disputed that the general provisions that appear in Title II of Regulation No 1408/71 apply only in the absence of provisions to the contrary in the special provisions relating to the various categories of benefits which constitute Title III of that regulation (see, in particular, judgment in *Aubin*, 227/81, EU:C:1982:209, paragraph 11).
- 36 That is in fact the situation in the case in the main proceedings, since pensioners are subject to a special scheme laid down in Chapter 3 of Title III of Regulation No 1408/71, entitled ‘Old age and death (pensions)’, of which Article 46a forms part. Thus, Article 46a(3)(c) of Regulation No 1408/71 excludes from the application of rules against overlapping — where these are provided for in the legislation of a Member State — voluntary insurance or continued optional insurance.
- 37 As the Advocate General observed in point 42 of his Opinion, these provisions enable a person who has moved within the European Union and has chosen to pay contributions to a voluntary insurance or optional continued insurance scheme, in order to build up an old age pension in another Member

State, to preserve the rights resulting therefrom. Provision for this thus takes the form of two different but complementary measures. In other words, in that situation, the EU legislature has, first, relaxed the principle that the legislation of only one Member State is to apply in a given situation and, second, made it possible for benefits obtained in a Member State by a person on the basis of voluntary insurance or optional continued insurance to not be subject to rules against overlapping that would reduce the allowance that person receives from another Member State.

- 38 That finding is supported by the objective pursued by Regulation No 1408/71 of ensuring, as stated in the second and fourth recitals in the preamble, free movement of employed and self-employed persons within the European Union, while respecting the special characteristics of national social security legislations. To that end, as is clear from the fifth, sixth and tenth recitals in the preamble thereto, that regulation upholds the principle of equality of treatment of workers under the various measures of national legislation and seeks to guarantee the equality of treatment of all workers occupied on the territory of a Member State as effectively as possible and not to penalise workers who exercise their right of free movement (see judgment in *Tomaszewska*, C-440/09, EU:C:2011:114, paragraph 28 and the case-law cited).
- 39 Therefore, the provisions of Regulation No 1408/71 must be interpreted in the light of Article 48 TFEU which aims to facilitate freedom of movement for workers and entails, in particular, that migrant workers must not lose their right to social security benefits or have the amount of those benefits reduced because they have exercised the right to freedom of movement conferred on them by the FEU Treaty (see, inter alia, judgments in *Bosmann*, C-352/06, EU:C:2008:290, paragraph 29, and *Hudzinski and Wawrzyniak*, C-611/10 and C-612/10, EU:C:2012:339, paragraph 46).
- 40 Likewise, the first recital in the preamble to Regulation No 1408/71 states that the provisions which that regulation contains for coordination of national social security legislations fall within the framework of freedom of movement of persons and should contribute towards the improvement of their standard of living (see judgments in *Bosmann*, EU:C:2008:290, paragraph 30, and *Hudzinski and Wawrzyniak*, EU:C:2012:339, paragraph 47).
- 41 As the Advocate General observed at point 50 of his Opinion, Article 46a(3)(c) of Regulation No 1408/71 must, consequently, be interpreted in such a way as to exclude the possibility of the worker being deprived, by the effect of national rules against overlapping, of the benefit of insurance periods completed voluntarily under the legislation of another Member State.
- 42 Therefore, having regard to the wording and context of Article 46a(3)(c) of Regulation No 1408/71 and the objective pursued by it, the concept of ‘voluntary insurance or continued optional insurance’ should be interpreted in a broad manner in order not to deprive the person concerned of any period of voluntary insurance or continued optional insurance completed under the legislation of another Member State.
- 43 In this connection, it should be pointed out that, as the Advocate General observed at point 43 of his Opinion, the origins of Article 46a(3)(c) of Regulation No 1408/71 also support a broad interpretation of the concept of ‘voluntary insurance or continued optional insurance’.
- 44 Article 46(2) of Regulation No 574/72, entitled ‘Calculation of benefits in the event of overlapping of insurance periods’, laid down that, for the purposes of the application of national rules against overlapping under Article 46(3) of Regulation No 1408/71, the amounts of benefits corresponding to periods of voluntary insurance or optional continued insurance were not to be taken into account.
- 45 In the judgment in *Schaap* (176/78, EU:C:1979:112, paragraphs 10 and 11), the Court held that although Article 46(2) of Regulation No 574/72 appears under the above-mentioned heading, it must be applied to each case falling within Article 46(3) of Regulation No 1408/71 so that for the purposes



of the application of that paragraph, the competent institution may not take account of the amount of benefits corresponding to periods [of insurance] completed under voluntary insurance or optional continued insurance.

- 46 As can be seen from the proposed amendment to Article 46(2) of Regulation No 574/72 submitted by the Commission of the European Communities (COM(89) 370 final, p. 23), the restriction sought by the insertion of Article 46a(3)(c) of Regulation No 1408/71 was intended to respond to the interpretation made by the Court of the latter provision.
- 47 Moreover, a broad interpretation of the concept of ‘voluntary insurance or continued optional insurance’ is supported by the case-law of the Court in relation to Article 9(2) of Regulation No 1408/71. The aim of that provision is to facilitate access to voluntary or optional continued insurance by requiring a Member State to take into account periods of insurance or residence completed under the legislation of another Member State, to the extent required, as if they were periods of insurance completed under the legislation of that first Member State, where the legislation of that first Member State makes admission to voluntary or optional continued insurance conditional on the completion of periods of insurance.
- 48 According to settled case-law, that concept covers every type of insurance incorporating a voluntary element, whether or not there is any continuance of existing insurance (see judgments in *Liégeois*, EU:C:1977:50, paragraphs 12 to 14, and *Hartmann Troiani*, 368/87, EU:C:1989:206, paragraph 12).
- 49 So far as the case in the main proceedings is concerned, it is apparent from the case-file that the AOW pension results, in principle, from a compulsory insurance scheme to which Mrs Bouman was automatically affiliated upon her return to the Netherlands in 1974. In respect of the four years preceding her retirement age, Mrs Bouman nevertheless requested and obtained an exemption from affiliation pursuant to Article 22 of the Dutch Decree.
- 50 The question, therefore, is whether, on a broad interpretation, such insurance falls within the concept of ‘voluntary insurance or continued optional insurance’ for the purposes of Article 46(a)(3)(c) of Regulation No 1408/71.
- 51 Contrary to the contentions of the Belgian Government in its observations, the mere fact that Mrs Bouman’s affiliation to the Netherlands general scheme was automatic, although exemption was available at her request, does not necessarily mean that it cannot be regarded as voluntary insurance or optional continued insurance.
- 52 In this connection, it should be pointed out, as the Advocate General observed at point 58 of his Opinion, that the voluntary or optional nature of an insurance such as that at issue in the main proceedings may stem both from the fact that the person concerned has to request affiliation to the insurance scheme or the continuation of the insurance, and from the fact that he has the right to obtain an exemption from affiliation. In both of those situations, there is a choice on the part of the insured person and they show that, if maintained, such affiliation remains optional.
- 53 Furthermore, it is apparent from the order for reference that the contributions paid by Mrs Bouman in the period during which she had the right to request an exemption from affiliation on the basis of Article 22 of the Dutch Decree gave her an additional social protection by also affecting the amount of her AOW pension.
- 54 It should therefore be held that the part of the benefit that is based on the period during which Mrs Bouman had the right, in principle, to an exemption from affiliation, but did not exercise that option, falls within the concept of ‘voluntary insurance or continued optional insurance’ for the

purposes of Article 46a(3)(c) of Regulation No 1408/71, if that continuation of affiliation during the period in question affects the periods of affiliation and, accordingly, the amount of Mrs Bouman's future old age pension.

- 55 That result cannot be called in question by the argument relied on by the Belgian Government in its observations. According to the Belgian Government, the concept in fact relates only to covering periods of non-affiliation, with the aim of reducing or filling gaps in the constitution of an old age pension, and since waiving affiliation results in a person being relieved of having to pay contributions, it produces the opposite result, creating such gaps, so that the voluntary continuation of a compulsory affiliation can never be linked to an exemption.
- 56 Suffice it to point out, in that regard, that it does not follow from the wording of Article 46a(3)(c) of Regulation No 1408/71, nor from the scheme of the regulation, that a 'voluntary insurance or continued optional insurance' for the purposes of that provision has the sole aim of filling gaps in the constitution of a pension.
- 57 Furthermore, the objective underlying that provision, which is to not deprive the person concerned of the benefit of any period of voluntary insurance or optional continued insurance completed under the legislation of another Member State, militates against such a restrictive interpretation of the concept of 'voluntary insurance or continued optional insurance', which takes account of only one aim amongst others that may be pursued by the national legislation concerned.
- 58 It must therefore be held that the concept may cover the option granted to the person concerned of deciding to continue or to waive his affiliation to a compulsory insurance scheme for certain periods, to the extent that that choice affects the extent of the future social security benefit.
- 59 Having regard to all the foregoing considerations, the answer to the question referred is that Article 46a(3)(c) of Regulation No 1408/71 must be interpreted as encompassing the part of the benefit resulting from a period of insurance during which the person concerned had the right to obtain an exemption from affiliation to the compulsory insurance scheme, in a situation where such affiliation, during the period in question, affects the extent of the social security benefit.

### **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 (First Chamber) hereby rules:

**Article 46a(3)(c) 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, must be interpreted as encompassing the part of the benefit resulting from a period of insurance during which the person concerned had the right to obtain an exemption from affiliation to the compulsory insurance scheme, in a situation where such affiliation, during the period in question, affects the extent of the social security benefit.**

[Signatures]