



## JUDGMENT OF THE COURT

14 May 2019

*(Regulation (EC) No 883/2004 – Article 24 – Pensioner residing outside the competent State – Benefits in kind in the place of residence – Reimbursement procedure)*

In Case E-2/18,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Princely Court of Liechtenstein (*Fürstliches Landgericht*), in a case pending before it between

**C**

and

**Concordia Schweizerische Kranken- und Unfallversicherung AG, Landesvertretung Liechtenstein**

concerning the interpretation of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems,

THE COURT,

composed of: Páll Hreinsson, President, Per Christiansen (Judge-Rapporteur) and Bernd Hammermann, Judges,

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

- C, represented by José R. Tent, Advocate, and ADVOCATUR Beck & Partner AG;
- Concordia Schweizerische Kranken- und Unfallversicherung AG, Landesvertretung Liechtenstein (“Concordia”), represented by Ivo Bühler and Andreas Dobler, Advocates;

- the Government of Liechtenstein, represented by Dr Andrea Entner-Koch, Director, and Thomas Bischof, Deputy Director, EEA Coordination Unit, acting as Agents;
- the Government of the Netherlands, represented by Mielle Bulterman and Jurian Langer, head and staff member, respectively, of the European Law Division of the Legal Affairs Department, Ministry of Foreign Affairs, acting as Agents;
- the Government of Spain, represented by Miguel Sampol Pucurull, Abogado del Estado-Jefe, and Alejandro Rubio González, Abogado del Estado, Members of the Spanish Legal Service before the Court of Justice of the European Union, acting as Agents;
- the EFTA Surveillance Authority (“ESA”), represented by Ewa Gromnicka, Michael Sánchez Rydelski and Carsten Zatschler, members of its Department of Legal & Executive Affairs, acting as Agents; and
- the European Commission (“the Commission”), represented by Denis Martin and Nicola Yerrell, legal adviser and member, respectively, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

having heard oral argument of the Government of Liechtenstein, represented by Thomas Bischof; the Government of the Netherlands, represented by Jurian Langer; the Government of Spain, represented by Miguel Sampol Pucurull; ESA, represented by Michael Sánchez Rydelski; and the Commission, represented by Nicola Yerrell, at the hearing on 30 January 2019,

gives the following

## **Judgment**

### **I Legal background**

*EEA law*

- 1 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1) (“the Basic Regulation”) and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security

systems (OJ 2009 L 284, p. 1) (“the Implementing Regulation”) were incorporated into the Agreement on the European Economic Area (“EEA”) by Decision of the EEA Joint Committee No 76/2011 of 1 July 2011 (OJ 2011 L 262, p. 33). The two regulations were added to points 1 and 2, respectively, of Annex VI to the Agreement (Social security). The decision entered into force on 1 June 2012.

2 Recitals 1, 4, 20 and 22 of the Basic Regulation read:

- (1) *The rules for coordination of national social security systems fall within the framework of free movement of persons and should contribute towards improving their standard of living and conditions of employment.*
- (4) *It is necessary to respect the special characteristics of national social security legislation and to draw up only a system of coordination.*
- (20) *In the field of sickness, maternity and equivalent paternity benefits, insured persons, as well as the members of their families, living or staying in a Member State other than the competent Member State, should be afforded protection.*
- (22) *The specific position of pension claimants and pensioners and the members of their families makes it necessary to have provisions governing sickness insurance adapted to this situation.*

3 Title I of the Basic Regulation comprises general provisions. Article 1 letter (l) reads:

*For the purposes of this Regulation:*

...

*(l) ‘legislation’ means, in respect of each Member State, laws, regulations and other statutory provisions and all other implementing measures relating to the social security branches covered by Article 3(1);*

*This term excludes contractual provisions other than those which serve to implement an insurance obligation arising from the laws and regulations referred to in the preceding subparagraph or which have been the subject of a decision by the public authorities which makes them obligatory or extends their scope, provided that the Member State concerned makes a declaration to that effect, notified to the President of the European Parliament and the President of the Council of the European Union. Such a declaration shall be published in the Official Journal of the European Union;*

4 Article 3(1)(a) of the Basic Regulation reads:

*This Regulation shall apply to all legislation concerning the following branches of social security:*

*(a) sickness benefits;*

5 Article 9(1) of the Basic Regulation reads:

*The Member States shall notify the Commission of the European Communities in writing of the declarations referred to in Article 1(1), the legislation and schemes referred to in Article 3 ... as well as substantive amendments made subsequently. Such notifications shall indicate the date of entry into force of the laws and schemes in question or, in the case of the declarations provided for in Article 1(1), the date from which this Regulation will apply to the schemes specified in the declarations by the Member States.*

6 Title III of the Basic Regulation contains special provisions concerning the various categories of benefits covered by that regulation. Chapter 1 of Title III concerns sickness, maternity and equivalent paternity benefits. Section 2 of Chapter 1 applies to pensioners and members of their families, and comprises Articles 23 to 30. Article 24 reads in extract:

*1. A person who receives a pension or pensions under the legislation of one or more Member States and who is not entitled to benefits in kind under the legislation of the Member State of residence shall nevertheless receive such benefits for himself/herself and the members of his/her family, in so far as he/she would be entitled thereto under the legislation of the Member State or of at least one of the Member States competent in respect of his/her pensions, if he/she resided in that Member State. The benefits in kind shall be provided at the expense of the institution referred to in paragraph 2 by the institution of the place of residence, as though the person concerned were entitled to a pension and benefits in kind under the legislation of that Member State.*

*2. In the cases covered by paragraph 1, the cost of benefits in kind shall be borne by the institution as determined in accordance with the following rules:*

*(a) where the pensioner is entitled to benefits in kind under the legislation of a single Member State, the cost shall be borne by the competent institution of that Member State;*

...

7 Article 35 of the Basic Regulation reads:

*1. The benefits in kind provided by the institution of a Member State on behalf of the institution of another Member State under this Chapter [Chapter 1 of Title III] shall give rise to full reimbursement.*

*2. The reimbursements referred to in paragraph 1 shall be determined and effected in accordance with the arrangements set out in the Implementing Regulation, either on production of proof of actual expenditure, or on the basis of fixed amounts for Member States the legal or administrative structures of which are such that the use of reimbursement on the basis of actual expenditure is not appropriate.*

*3. Two or more Member States, and their competent authorities, may provide for other methods of reimbursement or waive all reimbursement between the institutions coming under their jurisdiction.*

8 Article 76(4) of the Basic Regulation reads:

*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 must inform the institutions of the competent Member State and of the Member State of residence as soon as possible of any change in their personal or family situation which affects their right to benefits under this Regulation.*

9 Article 83 of the Basic Regulation reads:

*Special provisions for implementing the legislation of certain Member States are referred to in Annex XI.*

10 Annex XI to the Basic Regulation contains an entry concerning Liechtenstein. Point 1(a)(i) and (ii) of that entry reads:

*1. Compulsory insurance under Liechtenstein sickness insurance scheme for benefits in kind (“Krankenpflegeversicherung”) and possible exemptions:*

*(a) The Liechtenstein legal provisions governing compulsory sickness insurance for benefits in kind shall apply to the following persons not resident in Liechtenstein:*

- (i) persons subject to Liechtenstein legal provisions under Title II of the Regulation;*
- (ii) persons for whom Liechtenstein shall bear the costs of benefits according to Article 24 ... of the Regulation;*

11 Recital 17 of the Implementing Regulation reads:

*This Regulation, and especially the provisions concerning the stay outside the competent Member State and concerning scheduled treatment, should not prevent the application of more favourable national provisions, in particular with regard to the reimbursement of costs incurred in another Member State.*

12 Article 22(1) of the Implementing Regulation reads:

*The competent authorities or institutions shall ensure that any necessary information is made available to insured persons regarding the procedures and conditions for the granting of benefits in kind where such benefits are received in the territory of a Member State other than that of the competent institution.*

13 Article 24(1) and (3) of the Implementing Regulation reads:

*1. For the purposes of the application of Article 17 of the basic Regulation, the insured person and/or members of his family shall be obliged to register with the institution of the place of residence. Their right to benefits in kind in the Member State of residence shall be certified by a document issued by the competent institution upon request of the insured person or upon request of the institution of the place of residence.*

...

*3. This Article shall apply mutatis mutandis to the persons referred to in Articles 22, 24, 25 and 26 of the basic Regulation.*

*National law*

14 The Basic Regulation and the Implementing Regulation are directly applicable in Liechtenstein.

15 The system of mandatory health insurance (*Obligatorische Krankenpflegeversicherung*, “OKP”) is governed by the Law of 24 November 1971 on health insurance (*Gesetz über die Krankenversicherung*, LR 832.10) (“KVG”). In Liechtenstein’s notification to ESA

pursuant to Article 9 of the Basic Regulation, the KVG is mentioned as legislation and schemes referred to in Article 3 of the Basic Regulation. Persons subject to the mandatory health insurance requirement must conclude an appropriate insurance contract with a Government-approved health insurance fund. According to the referring court, there are currently three approved health insurance funds in Liechtenstein that provide mandatory health insurance.

- 16 The mandatory health insurance covers in- and outpatient treatment in accordance with Article 18 KVG. As regards outpatient treatment, the OKP is available in two variants, both of which have to be offered by health insurance funds. Under “OKP Basic”, the choice of outpatient service providers is limited to those with whom the health insurance funds have concluded a service contract. Under “OKP Plus”, the insured person is free to choose the outpatient service provider. Certain maximum tariffs apply with regard to both in- and outpatient treatment.

## **II Facts and procedure**

- 17 According to the referring court, C worked in Liechtenstein from 1977 to 1999. Since 1 December 2000 he has received a disability pension under the Liechtenstein disability insurance scheme. He has taken out mandatory health insurance under Liechtenstein law with Concordia. The OKP Plus insurance provides for the cover prescribed by Liechtenstein law, and grants worldwide a free choice of doctor.
- 18 C resided in Liechtenstein until 31 May 2003. On 1 June 2003, he moved his residence to Spain. He registered with the institution of the place of residence, the Spanish National Social Security Institution (*Instituto Nacional de la Seguridad Social*) (“the Spanish institution”), using an E121 form issued by Concordia. The form certifies entitlement to healthcare for persons not living in the country in which they are insured.
- 19 C suffers from mental and physical disorders of a chronic nature. For several years he has received benefits in kind in various private healthcare institutions outside the national health system in Spain. The institutions issued invoices for the treatment, which C forwarded to Concordia. Concordia bore these costs until 31 March 2016.
- 20 For the period after 31 March 2016, invoices for continued treatment in Spain were submitted to Concordia on C’s behalf. However, Concordia concluded in March 2017 that, due to the chronic nature of C’s disorders, there was no longer a need for hospital care after 1 April 2016.
- 21 On 6 September 2017, Concordia informed C’s lawyers that it would cover in full the in-patient stay at the private healthcare institutions up to 31 March 2016, and up to 30 June 2016 as a transitional period. Concordia would pay a fixed contribution daily towards care

costs for the period after that date, and reimburse the costs for certain other medical services in this period.

- 22 Concordia then adopted two orders, which are at issue in the national proceedings. First, C was ordered to claim reimbursement of benefits in kind received in Spain after 1 September 2017 from the Spanish institution. Invoices partly or fully rejected by the Spanish institution were to be submitted to Concordia. Furthermore, Concordia reserved the right to recover benefits over-reimbursed for the period 1 July 2003 to 31 August 2017. In the second order, Concordia held that it would pay C's care costs of CHF 37.60 per day from 1 July 2016 to 30 November 2017, unless benefits in kind were already provided in Spain. Payments after that period would be dependent on a request for a commitment to cover costs.
- 23 In November 2017, C challenged the two orders before the Princely Court. On the basis of his insurance policy, he argues that Concordia should be ordered to pay for all medically prescribed treatments. His contract covers the free choice of doctor and the cost of treatment in Liechtenstein and abroad, up to the amount of the statutory tariff. C argues that the Basic Regulation is not applicable. The Spanish institution does not cover costs arising in the private insurance system. Invoicing the Spanish institution would also delay the procedure, as compared to invoicing Concordia directly.
- 24 Concordia argues that the action should be dismissed. Under Article 24 of the Basic Regulation, C is entitled to benefits in kind in Spain as if he were insured under Spanish legislation. His invoices for treatment must be submitted to the Spanish institution which will reimburse him and then settle with Concordia. He may submit invoices to Concordia only to the extent they are not covered by the Spanish institution, and only up to the maximum of the tariffs applicable to his insurance. Since Concordia already provided benefits in excess of that limit, it argues that it is entitled to recover these over-reimbursed benefits.
- 25 In the proceedings before the Princely Court, C presented documents showing that he had attempted to submit various invoices for his medical treatment to the Spanish institution. The Spanish institution had refused to reimburse the costs, as they had been incurred in private institutions outside the national health system.
- 26 By a letter of 13 July 2018, registered at the Court on 17 July 2018, the Princely Court decided to stay the proceedings and refer the following questions to the Court:
  1. *Does [the Basic Regulation] merely lay down a minimum framework which must be complied with in order to prevent distortions of competition or are the rules of that regulation mandatory in so far as they also affect and restrict benefit obligations to be performed worldwide under the insurance contract? Is [the Basic Regulation] applicable to social insurance systems which merely oblige workers to demonstrate adequate health insurance but allow them, by way of contractual*



*autonomy, to choose between several different insurers governed by private law and only require proof that an appropriate insurance contract has been concluded?*

*2.(a) Is a policyholder required, on account of the validity of [the Basic Regulation], to submit invoices which are covered by the insurance contract concluded within the framework of the statutory health insurance scheme to the social insurance institution in his place of residence, with the result that the social insurance institution which is situated in the Member State responsible for payment of the pension can be made liable for payment only once the institution in his place of residence has refused to pay or can a policyholder none the less rely on his rights under the insurance contract?*

*(b) If, in accordance with point (a), it is not possible for the policyholder to rely on the insurance contract:*

*Is that also the case where the insurance contract is concluded within the framework of the statutory insurance requirement but the contractual insurance goes beyond the minimum required by law and has thus been concluded to some extent 'voluntarily'?*

*3. If policyholders are obliged, in accordance with Question 2, to submit invoices first to the institution in their State of residence:*

*(a) Does this also apply to an insured person who has already been provided benefits under the contractual relationship for several years or is reliance by the social insurance scheme on [the Basic Regulation] contrary to the principle of good faith?*

*(b) Is a social insurance scheme entitled, relying on [the Basic Regulation], to make claims for recovery to an insured person because in the past it has provided insurance cover in excess of the level specified in the regulation, that is to say, it has provided benefits which do not have to be paid under the rules of that regulation, or it is contrary to the principle of good faith to make claims for recovery?*

*(c) Does, in the light of [the Basic Regulation], the provision of benefits by the social insurance scheme, without invoices having been submitted through the social insurance institution in the place of residence, also entitle the policyholder to the future provision of benefits, without the need to submit invoices through the social insurance institution in the place of residence?*

27 In the same letter, the referring court requested the Court to apply an accelerated procedure pursuant to Article 97a of the Rules of Procedure. That request was denied by an order of the President of 11 September 2018.

- 28 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

### **III Answers of the Court**

#### *Questions 1 and 2*

- 29 By Questions 1 and 2, the referring court seeks, in essence, to clarify whether Article 24 of the Basic Regulation provides a mandatory procedure for the provision of benefits in kind to an insured person who receives a pension from one EEA State but resides in another EEA State, where the State of residence has refused benefits in kind to the pensioner on the basis that those benefits fall outside the scope of its social security system. The Court will assess these questions together.

#### Observations submitted to the Court

- 30 C submits that the Basic Regulation is not applicable to the case, since Concordia has offered C insurance cover worldwide with a free choice of doctor. In any event, the Basic Regulation only entails coordination and not harmonisation of social security systems, and cannot therefore affect obligations to provide benefits under a private insurance contract. Coordination of social security systems also presupposes that two systems provide equivalent benefits, which is not the case here since the Spanish social security system does not cover treatment received under a private insurance scheme. Therefore, C cannot be required to submit invoices first to the Spanish institution.
- 31 Concordia submits that the conflict rules laid down by the Basic Regulation are mandatory for the EEA States. Article 24 contains specific derogating rules with regard to sickness benefits for pensioners, and is part of a complete system of conflict rules. Insured persons falling within the scope of the rules cannot elect to counteract their effects by withdrawing voluntarily from their application (reference is made to the judgment in *van Delft*, C-345/09, EU:C:2010:610, paragraphs 51, 52, 56, 57 and 72).
- 32 Concordia argues that, under Article 24 of the Basic Regulation, the institution of the place of residence must provide benefits in kind in accordance with its legislation, in this case by reimbursing invoices submitted by C, and then claim reimbursement from Concordia. This will determine the extent to which benefits are provided under the compulsory part of C's insurance. The voluntary part of the insurance only reimburses benefits not already reimbursed under the compulsory scheme.
- 33 The Government of Liechtenstein refers to the declaration it has made under Article 9 of the Basic Regulation concerning the KVG and therefore submits that the Basic Regulation

and the Implementing Regulation apply to the insurance at issue in the present case. This is not affected by the fact that, under the KVG, workers may choose between different insurers governed by private law. Moreover, the coordination provisions of the Basic Regulation are mandatory insofar as it sets out common rules and principles that have to be observed by all national authorities, social security institutions, courts and tribunals when applying national law.

- 34 In the view of the Government of Liechtenstein, Article 24 of the Basic Regulation sets out a mandatory procedure concerning benefits in kind provided to a pensioner who is not entitled to benefits in kind under the legislation of the EEA State of residence. An insured person cannot rely on his rights under an insurance contract if these rights are contrary to this procedure. Moreover, the Liechtenstein Government denies that there is a voluntary element involved because the OKP Plus scheme is a variant of the mandatory healthcare insurance.
- 35 The Government of the Netherlands submits that if Spanish social security law does not cover the treatment at issue in the present case, Articles 24 and 35 of the Basic Regulation do not apply. However, even if such treatment were covered by Spanish social security law, the compensatory mechanism established by Articles 24 and 35 is neither compulsory in all situations nor exhaustive. It refers, inter alia, to Article 35(3) of the Basic Regulation, which allows two or more EEA States to provide for other methods of reimbursement, and to recital 17 of the Implementing Regulation, which specifically states that the Implementing Regulation should not prevent the application of more favourable national provisions, in particular with regard to the reimbursement of costs incurred in another EEA State.
- 36 At the hearing, the Government of the Netherlands submitted that although Article 24 of the Basic Regulation entitles C to receive benefits in kind from the Spanish institution, it would be contrary to the aim of that provision if it were interpreted as preventing him from relying on his insurance contract with Concordia. Where a national health insurance scheme provides for direct reimbursement of healthcare costs in other EEA States, insured persons must be able to choose between having the costs reimbursed through the institution of the place of residence or through their insurance. In both cases, the competent institution pays the costs for insured persons residing in another EEA State. This is the intended result of the Basic Regulation. Whether a right to direct reimbursement exists in the present case, depends on an interpretation of Liechtenstein law.
- 37 The Government of Spain notes that, upon the production of the E121 form in 2003, C was registered by the Spanish institution as a pensioner from Liechtenstein entitled to receive services from the Spanish national health system. Under Spanish law, benefits will be provided only in the facilities of that system, that is, in the facilities of the public healthcare system, which includes mental health, or under an agreement between the Spanish authorities, competent to provide services, and a private provider, except in life-threatening

or urgent situations where it was not possible to use those facilities. Since C's costs relate to services provided by private health centres outside the national health system, and no life-threatening situation was involved, the Spanish institution could not reimburse those costs.

- 38 The Spanish Government submits further that C cannot be required first to submit invoices to the Spanish institution. The Spanish system provides health services through its own means, and is not a system based on reimbursement of costs. Therefore, the Basic Regulation does not apply to the dispute between C and Concordia.
- 39 ESA submits that the coordination rules of the Basic Regulation determine to which State's social security system a citizen is subject. The rules are mandatory for both individuals and institutions. Referring to Liechtenstein's notification made under Article 9 of the Basic Regulation mentioning the KVG, and the entry concerning Liechtenstein's sickness insurance for benefits in kind in Annex XI to that regulation, ESA submits further that the Basic Regulation applies to the Liechtenstein health insurance system, and that the benefits under the insurance contract with Concordia must be considered as social security benefits.
- 40 ESA submits that Article 24 of the Basic Regulation only applies to treatment provided by the institution of the place of residence. Treatment in private institutions outside the Spanish social security system falls outside the ambit of Article 24 of the Basic Regulation. This is supported by Article 35(1). Since the Spanish institution did not incur any costs in relation to C's treatment, there was no reimbursement to claim from Concordia. In any event, Article 24 of the Basic Regulation does not prevent the competent institution from providing to pensioners falling within the scope of its national legislation benefits which are more favourable than those which it is bound to provide for them under EEA rules (reference is made to the judgment in *Jordens-Vosters*, 69/79, EU:C:1980:7, paragraph 12).
- 41 The Commission submits that the provisions of the Basic Regulation form a complete system of mandatory conflict rules, from which it is not possible to "opt out" (reference is made, inter alia, to *van Delft*, cited above, paragraphs 51 and 52). That binding nature is unaffected by the fact that a national social security system may permit individuals subject to compulsory healthcare insurance to choose between different State-approved providers.
- 42 The Commission argues that Article 24 of the Basic Regulation applies not only to situations where the pensioner is not entitled to any benefits in kind, but also to situations where the pensioner is not entitled to a specific benefit in kind, as in the present case. In both cases, the key point is that the pensioner should not lose entitlement to the benefits in kind he would otherwise have enjoyed if still resident in the competent State (reference is made to the judgment in *Aldewereld*, C-60/93, EU:C:1994:271, paragraph 26). Thus, following the rejection by the Spanish institution of C's claim for reimbursement of private healthcare costs, C is entitled under Article 24(1) to the further benefits in kind which he

would have received if resident in Liechtenstein, including the costs of healthcare treatment with non-approved service providers.

#### Findings of the Court

- 43 According to its recital 1, the Basic Regulation seeks to coordinate the national social security schemes of the EEA States with the objective of promoting the free movement of persons and contributing towards improving their standard of living and conditions of employment. Recital 4 recognises the need to respect the special characteristics of national social security legislation. Therefore, the Basic Regulation does not harmonise the material content of social security benefits, but draws up a system of coordination (see, to that effect, Case E-4/07 *Porkelsson* [2008] EFTA Ct. Rep. 3, paragraph 38). In that regard, the Court recalls that EEA law does not detract from the power of the EEA States to organise their social security systems. In the absence of harmonisation at EEA level, it is for the legislature of each EEA State to determine the conditions on which social security benefits are granted. However, when exercising that power, the EEA States must comply with EEA law (see Joined Cases E-11/07 and E-1/08 *Rindal and Slinning* [2008] EFTA Ct. Rep. 320, paragraph 43).
- 44 Pursuant to its Article 2(1), the Basic Regulation applies, inter alia, to nationals of an EEA State who have been subject to the legislation of one or more EEA States. C is a Spanish national now resident in Spain, having worked for many years in Liechtenstein. Moreover, pursuant to Article 3(1)(a), the Basic Regulation applies to all legislation concerning the sickness benefits branch of social security.
- 45 The term legislation, as defined in the first subparagraph of Article 1 letter (l) of the Basic Regulation, covers, in respect of each EEA State, laws, regulations and other statutory provisions and all other implementing measures relating to the social security branches covered by Article 3(1). It follows from the second subparagraph of Article 1 letter (l) that the term legislation includes contractual provisions which serve to implement an insurance obligation arising from the laws and regulations referred to in the first subparagraph.
- 46 The relevant legislation of each EEA State shall be notified to the Commission or ESA, as applicable, in writing pursuant to Article 9 of the Basic Regulation. Liechtenstein's notification to ESA pursuant to that provision refers, inter alia, to the KVG. C's OKP-Plus insurance contract with Concordia is concluded in the framework of the mandatory health insurance under the KVG. The contract therefore falls within the notion of legislation in Article 1 letter (l) of the Basic Regulation. That finding is unaffected by the fact that a national social security system may permit individuals subject to compulsory healthcare insurance to choose between different approved providers.
- 47 The Basic Regulation contains detailed provisions determining the social security legislation applicable to an individual case. These provisions form a system of mandatory conflict of law rules. Therefore, insured persons falling within the scope of those rules

cannot choose the legislation they will be subject to, unless such freedom of choice is expressly provided for by the Basic Regulation (compare *van Delft*, cited above, paragraphs 52 and 54).

- 48 C has received a disability pension under the Liechtenstein disability insurance scheme since 1 December 2000. For the purposes of the application of Article 24 of the Basic Regulation, Article 24(1) and (3) of the Implementing Regulation requires that the person receiving a pension or pensions under the legislation of one or more EEA State register with the institution of the place of residence. C duly registered with the competent Spanish social security institution with effect from 1 June 2003 on the basis of an E121 form issued by Concordia.
- 49 Under Article 24(1) of the Basic Regulation, a person in C's situation who receives a pension under the legislation of an EEA State, and who is otherwise not entitled to benefits in kind under the legislation of the EEA State of residence, shall nevertheless receive benefits in kind in the EEA State of residence insofar as he would be entitled to those benefits under the legislation of the EEA State competent in respect of his pension, if he resided in that State.
- 50 Benefits in kind pursuant to Article 24(1) of the Basic Regulation shall be provided at the expense of the institution referred to in Article 24(2). This means that where the pensioner is entitled to benefits in kind under the legislation of a single EEA State, the cost shall be borne by the competent institution of that EEA State. In this case, that is the competent institution of Liechtenstein, namely Concordia. The reimbursement procedure is set out in Article 35 of the Basic Regulation, and in the Implementing Regulation.
- 51 It may be added that pursuant to point 1(a)(ii) of the entry concerning Liechtenstein in Annex XI to the Basic Regulation, the Liechtenstein legal provisions governing compulsory sickness insurance for benefits in kind shall apply to the persons for whom Liechtenstein shall bear the cost of benefits according to, inter alia, Article 24 of the Basic Regulation.
- 52 In the present case, as the Agent of the Spanish Government made clear at the hearing, C has been treated at a private institution which does not have an agreement with the Spanish authorities, competent to provide services, and C's condition is chronic and not a life-threatening or an urgent situation. Therefore, C has not received benefits in kind from the Spanish institution. Instead, relying on his insurance contract with Concordia, which grants him worldwide a free choice of doctor, C has received benefits in kind at private healthcare centres outside the Spanish national health system. These healthcare centres have invoiced C for the treatment provided. At the core of the present case is whether it follows from Article 24(1) of the Basic Regulation that C is required to submit these invoices to the Spanish institution for reimbursement, or if he may submit them directly to Concordia.

- 53 Article 24(1) of the Basic Regulation provides the pensioner with an entitlement to receive benefits in kind from the institution of the place of residence at the expense of the competent institution in the EEA State under whose legislation the pension is paid. It follows from recitals 20 and 22 of the Basic Regulation that the aim of that provision is to afford protection to pensioners residing in an EEA State other than the competent EEA State. It would be contrary to that purpose to hold that Article 24 prohibits an EEA State from granting pensioners better protection than that arising from the application of that provision (compare *Jordens-Vosters*, cited above, paragraph 11, and the judgment in *von Chamier-Glisczinski*, C-208/07, EU:C:2009:455, paragraph 56). As stated in recital 17 of the Implementing Regulation, EEA States may apply more favourable national provisions, in particular with regard to the reimbursement of costs incurred in another EEA State.
- 54 According to the wording of the first sentence of Article 24(1) of the Basic Regulation, an express condition for its application is that the pensioner is not entitled to benefits in kind under the legislation of the EEA State of residence. Thus, Article 24(1) of the Basic Regulation must be interpreted as laying down a mandatory rule which is applicable to situations where the pensioner is not entitled to benefits in kind under the legislation of the said EEA State due, inter alia, to the fact that the specific category of benefits falls outside the scope of its national social security system. In those circumstances, the pensioner is entitled, pursuant to Article 24(1) of the Basic Regulation, to receive benefits in kind at the expense of the competent institution in the EEA State under whose legislation the pension is paid.
- 55 For pensioners, such as C, to be permitted to make a claim directly to the competent institution in the EEA State under whose legislation the pension is paid, they must be able to demonstrate that they are not entitled to receive the benefits from the State of residence, in accordance with Article 24(1) of the Basic Regulation.
- 56 However, in line with the cooperation principles set out in Article 76 of the Basic Regulation, and in particular the duty of mutual information and cooperation imposed by Article 76(4) upon both institutions and individuals, the pensioner has a right to submit claims for reimbursement directly to the competent institution in the EEA State under whose legislation the pension is paid, in particular, but not only, if he has been refused reimbursement by the State of residence. The competent institution of the EEA State under whose legislation the pension is paid must ensure that any necessary information is made available to insured persons regarding the procedures and conditions for the granting of benefits in kind where such benefits are received in the territory of an EEA State other than that of the competent institution, in accordance with Article 22(1) of the Implementing Regulation. Thus, the burden for ensuring that a pensioner is informed of the correct procedures is placed upon the competent institution in the EEA State under whose legislation the pension is paid. As a result, if that institution does not provide the pensioner with such information, that must not adversely affect the pensioner's rights vis-à-vis the institution.

- 57 It follows from the information provided by the referring court and the Spanish Government that, since the relevant invoices in the present case relate to services provided by private health centres outside the Spanish national health system, and no life-threatening situation was involved, the invoices cannot be reimbursed under the Spanish national health system. In such a situation, Article 24 of the Basic Regulation provides that C may submit relevant invoices directly to Concordia.
- 58 The answer to Questions 1 and 2 is therefore that when a pensioner is not entitled to benefits in kind in the EEA State of residence, due to the fact that the benefits fall outside the scope of its social security system, the pensioner is entitled, pursuant to Article 24(1) of the Basic Regulation, to receive the benefits in kind at the expense of the competent institution in the EEA State under whose legislation the pension is paid. The pensioner has a right to submit claims for reimbursement directly to the competent institution in the EEA State under whose legislation the pension is paid, in particular, but not only, if he has been refused reimbursement by the State of residence. In accordance with Article 22(1) of the Implementing Regulation and Article 76(4) of the Basic Regulation, if the competent institution does not provide the pensioner with information as to the procedure to be followed, that must not adversely affect the pensioner's rights vis-à-vis the institution.

*Question 3*

- 59 In light of the response given to Questions 1 and 2, there is no need to address Question 3.

**IV Costs**

- 60 The costs incurred by the Governments of Liechtenstein, the Netherlands and Spain, and by ESA and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are a step in the proceedings pending before the referring court, any decision on costs for the parties to those proceedings is a matter for the referring court.



On those grounds,

THE COURT

in answer to the questions referred to it by the Princely Court of Liechtenstein hereby gives the following Advisory Opinion:

- 1. When a pensioner is not entitled to benefits in kind in the EEA State of residence, due to the fact that the benefits fall outside the scope of its social security system, the pensioner is entitled, pursuant to Article 24(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, to receive benefits in kind at the expense of the competent institution in the EEA State under whose legislation the pension is paid.**
- 2. The pensioner has a right to submit claims for reimbursement directly to the competent institution in the EEA State under whose legislation the pension is paid, in particular, but not only, if he has been refused reimbursement by the State of residence. In accordance with Article 22(1) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems and Article 76(4) of Regulation (EC) No 883/2004, if the competent institution does not provide the pensioner with information as to the procedure to be followed, that must not adversely affect the pensioner's rights vis-à-vis the institution.**

Páll Hreinsson

Per Christiansen

Bernd Hammermann

Delivered in open court in Luxembourg on 14 May 2019.

Ólafur Jóhannes Einarsson  
Registrar

Páll Hreinsson  
President