Vastuvõtmise kuupäev	:	28/07/2026

Anonymised version

Case C-639/26

Request for a preliminary ruling

Date lodged:

9 June 2026

Referring court:

Krajský soud v Brně (Czech Republic)

Date of the decision to refer:

8 June 2026

Applicant:

KA

Defendant:

Česká správa sociálního zabezpečení

ORDER

The Krajský soud v Brně (Brno Regional Court) has ruled […] in the case of the

applicant: **KA** […]

v

the defendant: **Česká správa sociálního zabezpečení (Czech Social Security Administration, Czech Republic)**

[…]

in proceedings concerning an application contesting the defendant's decision of 10 June 2025 […]

as follows:

EN

[…] the following question is hereby submitted to the Court of Justice of the European Union for a preliminary ruling, pursuant to Article 267 of the Treaty on the Functioning of the European Union:

Must Article 46 and Article 47(1)(d) of Regulation (EEC) No 1408/71 of the Council be interpreted as meaning that, in the calculation of a partial old-age benefit in a scheme in which the amount depends on earnings achieved during a reference period, it is sufficient to take into account the periods of insurance completed in another Member State merely as periods excluded from the reference period for determining the personal assessment base, or is it necessary to attribute to those periods elements of earnings derived from periods of insurance completed under the legislation of the competent state?

[…]

Grounds:

I. Subject matter of the proceedings and facts of the case

1 The applicant claimed a back payment on her old-age pension covering a period of more than five years. The Czech Social Security Administration rejected the application by a decision of 23 April 2025. The applicant lodged an objection challenging the decision, which was also rejected by a decision of the defendant of 10 June 2025 […] ('the contested decision'). The applicant challenged the decision by bringing an action.

2 By a decision of the defendant of 27 September 2007, the applicant was awarded a partial old-age pension as of 17 January 2007, pursuant to Paragraph 29 of zákon č. 155/1995 Sb., o důchodovém pojištění (Law 155/1995 on pension insurance; 'the Pension Insurance Law'), and pursuant to Article 46 of Council Regulation (EEC) No 1408/71. For the purpose of the calculation, periods of insurance completed in Italy were taken into account, using the 'excluded periods' mechanism.

3 The applicant's pension was adjusted by a decision of the defendant of 17 December 2008. At the same time, an additional period was recognised retroactively; however, even in that decision, the defendant failed to take into account the Italian periods of insurance in the calculation using elements of earnings derived from Czech periods of insurance and continued to exclude them from the reference period.

4 On 28 December 2017, the applicant presented a certificate of her previously unassessed employment in Italy, requesting a review of the periods of insurance in Italy and of the correctness of the Italian pension. Those documents showed that she had worked and been insured in Italy without interruption from 1 May 1997 to 30 April 2007, that is, to a greater extent than had previously been considered in the Czech proceedings.

5 On 23 January 2018, the competent Italian insurance institution sent a new E 205 I form to the defendant, according to which the applicant had completed a period of insurance of 2,445 days in Italy, from 1 May 1997 to 30 April 2007.

6 On the basis of that form, the defendant made a new calculation of the Czech old-age pension. In the new calculation, it applied average indexed daily earnings ('AIDE') calculated on the basis of the assessment bases obtained in the Czech Republic for the insured periods completed in Italy.

7 By decision of 22 May 2018, the defendant raised the applicant's partial old-age pension to 5,145 Czech koruny (CZK) per month, effective from 17 January 2007; in January 2018, the pension amounted to CZK 6,972 per month, following indexation. The back payment of old-age pension, amounting to CZK 56,111, was paid out to the applicant pursuant to Paragraph 56(1)(b) of the Pension Insurance Law, for the period starting 28 December 2012, that is, five years retrospectively from the date of the submission of the new certificate of insurance periods in Italy.

8 It follows from the defendant's statement in the present proceedings that the increase of the pension to CZK 5,145 per month was made as a result of the application of the average indexed daily earnings from the Italian periods of insurance instead of their exclusion, not primarily as a result of the subsequent inclusion of the Italian period of insurance.

9 The applicant contends that her pension was paid at a lower rate than what she was entitled to from the beginning and that that was the result of the defendant's erroneous procedure. In that regard, the applicant argues that the back payment cannot be limited to a five-year period.

II. Applicable legislation

II. (a) European Union legislation

10 Pursuant to Article 45 of the Treaty on the Functioning of the European Union (consolidated version, 'the TFEU'):

> '1. Freedom of movement for workers shall be secured within the Union.
>
> 2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.'

11 Pursuant to Article 48 TFEU:

> 'The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, they shall make arrangements to secure for employed and self-employed migrant workers and their dependants:

(a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries,

(b) payment of benefits to persons resident in the territories of Member States.'

12 The referring court infers from those provisions that that legislation must be interpreted in the light of the objective of ensuring effective free movement of workers and of preventing workers who take advantage of the freedom of movement from being disadvantaged in the field of social security merely due to the fact that they completed their periods of insurance in multiple Member States.

13 Article 46 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community ('Coordination Regulation 1408/71') regulates the mechanism for determining benefits in a situation when the insured person has completed periods of insurance in multiple Member States as follows:

'1. Where the conditions required by the legislation of a Member State for entitlement to benefits have been satisfied without having to apply Article 45 or Article 40 (3), the following rules shall apply:

(a) the competent institution shall calculate the amount of the benefit that would be due:

(i) on the one hand, only under the provisions of the legislation which it administers;

(ii) on the other hand, pursuant to paragraph 2.

…

2. Where the conditions required by the legislation of a Member State for entitlement to benefits are satisfied only after application of Article 45 and or Article 40 (3), the following rules shall apply:

(a) the competent institution shall calculate the theoretical amount of the benefit to which the person concerned could lay claim provided all periods of insurance and/or of residence, which have been completed under the legislation of the Member States to which the employed person or self-employed person was subject, have been completed in the State in question under the legislation which it administers on the date of the award of the benefit. If, under this legislation, the amount of the benefit is independent of the duration of the periods completed, the amount shall be regarded as being the theoretical amount referred to in this paragraph;

(b) the competent institution shall subsequently determine the actual amount of the benefit on the basis of the theoretical amount referred to in the preceding paragraph in accordance with the ratio of the duration of the periods of insurance or of residence completed before the materialization of the risk under the legislation which it administers to the total duration of the periods of insurance and of residence completed before the materialization of the risk under the legislations of all the Member States concerned.

3. The person concerned shall be entitled to the highest amount calculated in accordance with paragraphs 1 and 2 from the competent institution of each Member State without prejudice to any application of the provisions concerning reduction, suspension or withdrawal provided for by the legislation under which this benefit is due.

…'

14 Article 47 of Coordination Regulation 1408/71 contains additional provisions for the calculation of benefits in schemes dependent on elements of salary or earnings.

'1. For the calculation of the theoretical and pro rata amounts referred to in Article 46 (2), the following rules shall apply:

…

(d) where, under the legislation of a Member State, benefits are calculated on the basis of the amount of earnings, contributions or increases, the competent institution of the State shall determine the earnings, contributions and increases to be taken into account in respect of the periods of insurance or residence completed under the legislation of other Member States on the basis of the average earnings, contributions or increases recorded in respect of the periods of insurance completed under the legislation which it administers;

…'

15 Article 15 of Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Coordination Regulation No 1408/71 pertains to the conversion and aggregation of insurance periods. Its contents do not provide for any adjustment to the calculation of the earnings base.

16 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Coordination Regulation 883/2004), in particular Articles 52 and 56, builds on the earlier coordination regulation; however, the regime established by coordination regulation 1408/71 is that which is primarily decisive in the present case.

II. (b) National legislation

17 Pursuant to Paragraph 16(1) of the Pension Insurance Law:

> ‘(1) The personal assessment basis is the monthly average of the sum of the annual assessment bases of the insured person for the relevant period (Paragraph 18). That average shall be calculated as the product of the coefficient 30.4167 and the ratio of the sum of annual assessment bases for the reference period and the number of calendar days in the reference period; if there are any excluded periods during the relevant period (paragraphs 4 and 5), the number of calendar days falling within the reference period shall be reduced by the number of days in such excluded periods.’

18 Pursuant to Paragraph 56(1)(b) of the Pension Insurance Law:

> ‘If it is found that a pension has been granted or paid out in an amount lower than the entitlement or that it was wrongfully denied, or granted from a date later than that from which it was due, the pension shall be increased or granted from the date from which the pension or its increase is due. A pension or an increase shall be paid retroactively for a period of a maximum of five years from the date of the finding or the date on which the claim to the pension or its increase was made … A pension or an increase thereof shall, however, be paid from the day on which the pension or the increase thereof are due in the event that a pension was not granted or it was being paid out in an amount lower than the entitlement, or if it was wrongfully denied, or granted from a later date than that from which it was due, due to an erroneous procedure of a social security authority.’

19 The outcome of the present case depends on whether the original lower payment of the applicant’s pension was caused from the outset by an erroneous procedure in the calculation of the benefit.

II. (c) Existing (national) case-law

20 The existing case-law of the Nejvyšší správní soud (Supreme Administrative Court) is based on the assumption that the application of the concept of excluded periods in the calculation of a pension benefit in cross-border situations under Regulation No 1408/71 may be compatible with that coordination regulation.

21 In the past, the Supreme Administrative Court has accepted that such a method is consistent with the purpose of Articles 46 and 47 of Regulation 1408/71 if it effectively prevents an artificial reduction of domestic earnings, preserves their average level, and does not place a migrant worker at a disadvantage compared to a person insured in the national system alone. Accordingly, the compatibility of that methodology with the coordination regulation in existing national case-law has been based chiefly on a purpose- and function-based consideration that the coordination regulation pursues the coordination, rather than the harmonisation of national systems and that the concept of excluded periods may serve as one of the means of preventing the ‘fragmentation’ of earnings in a reference period (see judgments of the Supreme Administrative Court of 27 November 2008, ref. no 3

Ads 79/2007-58; of 9 October 2009, ref. no 4 Ads 51/2009-42, No 1991/2010 SAC coll.; of 29 April 2010, ref. no 3 Ads 90/2009-63, No 2297/2011 SAC coll.; and of 15 September 2010, ref. no 4 Ads 32/2010-56).

22 At the same time, however, that same case-law is the source of the referring court's doubts. Even though it has recognised that the method of excluded periods is compatible with the objective of Article 47 of Regulation 1408/71, it did so primarily on the basis of arguments relating to function and purpose. The referring court is therefore of the view that the question remains as to whether such functional compatibility also suffices in the light of the autonomous interpretation of an EU rule or whether the wording of Articles 46 and 47 of Regulation 1408/71 itself required a different approach to the calculation of a partial benefit – the allocation of elements of earnings derived from periods of insurance completed pursuant to the laws of the competent State.

23 Accordingly, the referring court finds that an authoritative interpretation of the issue by the Court of Justice of the European Union is necessary.

III. Necessity of the preliminary reference

24 In essence, the present case does not concern a dispute over facts or merely the issue of a change in administrative methodology, but rather, a dispute over the interpretation of EU law, namely of Article 46 and Article 47(1)(d) of Regulation 1408/71. The dispute between the parties is whether, at the time of the defendant's original decision, those provisions made it possible for periods of insurance concluded in another Member State to be taken into account only as excluded periods, or whether it at the time required that elements of earnings derived from periods of insurance concluded pursuant to the laws of the competent State be allocated to those periods.

25 The significance of the question in the present case is determinative. The defendant itself admits that the decisive increase of the Czech partial old-age pension in 2018 was primarily not due to the newly documented Italian period of insurance, but rather to a change in the calculation method, namely, the application of the average indexed daily earnings for the Italian periods of insurance, instead of their exclusion. Consequently, the dispute centres on whether both methods were equally permissible when applying the same provisions of EU law or whether EU law permitted only one of them as at the time of the original decision.

26 The referring court considers that it should clarify the difference between the methods whose legal admissibility is disputed in the case under review. The subject of the assessment is not the actual existence of coordination rules under Regulation 1408/71, but rather, whether the method of applying them in the determination of the benefit amount was compliant with the requirements of EU law.

27 Regulation 1408/71 governed the aggregation of periods of insurance and the calculation of theoretical and proportionate benefit amounts. The present dispute is about how periods of insurance completed in another Member State should be reflected in that legal framework in the calculation of the benefit in a system based on earnings.

28 For a certain period, foreign periods of insurance were taken into account in Czech practice by being considered as ‘excluded periods’ for the purpose of determining the basis for a personal assessment. Those periods were excluded from the reference period and thus did not result in a reduction of the average earnings gained in the Czech system. At the same time, however, no elements of earnings derived from Czech periods of insurance were allocated to them.

29 On the other hand, in the subsequent practice of the defendant, the average indexed daily earnings derived from periods of insurance concluded pursuant to Czech laws were used in place of periods of insurance concluded in another Member State. The difference between the two methods thus lies in how foreign periods of insurance were taken into account in the theoretical amount of the benefit in determining the earnings’ bases.

30 The referring court is of the view that that difference may have a significant impact on the resulting benefit amount. That was the case of the applicant, whose 2018 pension increase was caused by switching from the method based on excluded periods to the method based on the application of an element of earnings derived from Czech periods of insurance. In those circumstances, the referring court deems it necessary to clarify whether the former method was compatible with the requirements of Articles 46 and 47 of Regulation 1408/71.

31 The fact that the method applied originally is less advantageous does not in itself mean that it is unlawful. EU law governing the sphere of social security coordination does not automatically guarantee the application of the mathematically most advantageous calculation method in a situation when several methods satisfy the requirements of the coordination rules. In general terms, the court therefore accepts that a change in administrative or decision-making practice in itself does not automatically show the unlawfulness of the previous practice. An administrative authority may make its methodology more specific or harmonise it without necessarily recognising a prior breach of law. On the other hand, if a subsequent change in methodology is not caused by a new legal rule and if it does not merely involve a technical improvement, but rather, a different legal assessment of the same coordination rule, such a change may give rise to reasonable doubt as to whether or not the previous practice was contrary to EU law.

32 It follows from the defendant’s statement made at the request of the court that the transition to the method of the average indexed daily earnings was not viewed by the defendant as a direct consequence of an explicit change in legal rules, but rather as a change in administrative practice prepared in 2009, among other things

in relation to preparations for the application of a new EU coordination regulation and to the drafting of new international social security agreements. At the same time, the defendant stated that the new calculation method was subsequently also used in applying previous EU coordination regulations, namely, Regulation 1408/71 and Implementing Regulation 574/72.

33 The defendant stated expressly that both the calculation taking account of excluded periods and the calculation taking into account average indexed daily earnings were seen as legitimate and alternative methods, which was confirmed, in its opinion, by existing case-law. The referring court maintains that that very circumstance confirms the nature of the dispute as being related to EU law. The present case is concerned primarily with the question of whether two alternative methods of calculation were indeed permissible in the application of the same EU framework pursuant to Regulation 1408/71, or whether Articles 46 and 47 of that regulation permitted only a method of calculation in which elements of earnings derived from periods of insurance completed pursuant to the laws of a competent State are allocated to foreign periods of insurance. In other words, it is not clear whether the less advantageous method that was originally used still constituted a lawful option for the application of Articles 46 and 47 of the coordination regulation No 1408/71, or whether it constituted an erroneous application.

34 The answer to that question goes to the substance of the decision in this case. If the Court of Justice were to conclude that Articles 46 and 47 of Regulation No 1408/71 did not allow a mere exclusion of foreign periods of insurance at the time of the original decision, and instead required an allocation of elements of earnings derived from domestic periods of insurance, the lower amount of the benefit originally granted would be the result of an erroneous application of EU law. It is only on that basis that a national court can evaluate whether the conditions of Paragraph 56(1)(b) of the Pension Insurance Law have been met.

35 The wording of Article 47 of Regulation 1408/71 does not provide a clear answer to the question of whether a method based solely on excluded periods suffices in the calculation of a partial benefit and, accordingly, it is not an *acte clair*. At the same time, the referring court does not have any case-law of the Court of Justice available to it that would address this specific question directly and unequivocally and so it is not a case of an *acte éclairé*.

36 The court has therefore concluded that the decision in the case requires an interpretation of EU law and it is necessary to turn to the Court of Justice of the European Union.

[…]