JUDGMENT OF THE COURT (Fifth Chamber)
30 January 1997 *

In Case C-221/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal du Travail, Tournai, Belgium, for a preliminary ruling in the proceedings pending before that court between

Institut National d'Assurances Sociales pour Travailleurs Indépendants (Inasti)

and

Claude Hervein,

Hervillier SA

on the interpretation of Article 14a(2) of Regulation (EEC) No 1408/71 of the Council 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 (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6),

* Language of the case: French.

THE COURT (Fifth Chamber),

composed of: L. Sevón, President of the First Chamber, acting for the President of the Fifth Chamber, D. A. O. Edward, J.-P. Puissochet (Rapporteur), P. Jann and M. Wathelet, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Mr Hervein and Hervillier SA, by E. van Daele and P. Detournay, of the Mouscron Bar,

— the Belgian Government, by J. Devadder, Director of Administration at the Legal Department of the Ministry of Foreign Affairs, External Trade and Cooperation with Developing Countries, acting as Agent,

— the French Government, by C. de Salins, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and C. Chavance, Secretary in the same Directorate, acting as Agents,

— the Commission of the European Communities, by M. Patakia, of its Legal Service, acting as Agent,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 11 July 1996,

gives the following

Judgment

1 By judgment of 6 June 1995, received at the Court on 26 June 1995, the Tribunal du Travail (Labour Court), Tournai, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 14a(2) of Regulation (EEC) No 1408/71 of the Council 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 (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6, hereinafter 'the regulation').

2 The question was raised in proceedings brought by the Institut National d'Assurances Sociales pour Travailleurs Indépendants ('Inasti') against Mr Hervein and the Hervillier company concerning payment of social security contributions.

3 Until October 1986, Mr Hervein, a French national residing in France, carried out the duties of Chairman/Director General and Director or Assistant Director of various companies established in France and Belgium.

4 On 23 February 1988 Inasti brought an action against him before the Tournai Labour Court seeking payment of contributions in respect of his activity in Belgium between 1982 and 1986. It considers that Mr Hervein is self-employed in Belgium and, because he is subject to the French social security scheme for employed persons, employed in France so that, in accordance with Article

14c(1)(b) of Regulation No 1408/71, in conjunction with Annex VII thereto, he should be subject to the scheme for self-employed persons in Belgium.

5 Hervillier and Mr Hervein argue that he should not be subject to the Belgian scheme on the ground that despite the fact that he is treated in France as an employee for the purposes of social security cover, he does not pursue paid employment there. Since he carries out the same activity as a self-employed person in both France and Belgium, Article 14a(2) of the regulation requires that he be subject only to the legislation of the Member State in which he resides, that is to say the French legislation.

6 Being uncertain how Mr Hervein's work in France should be categorized for the purposes of Articles 14a and 14c of the regulation, the Tournai Tribunal du Travail decided to stay proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Is self-employment (*activité non-salariée*) for the purposes in particular of Article 14a(2) of Council Regulation (EEC) No 2001/83 of 2 June 1983 to be taken to include the activities of an independent worker (*travailleur indépendant*) who is a national of a Member State?'

7 By its question, the national court seeks to ascertain whether the activity in France of a person in Mr Hervein's situation constitutes employment or self-employment for the purposes of Articles 14a and 14c of the regulation. That question raises the more general issue of the interpretation of the terms 'employment' and 'self-employment' in Title II of the regulation, concerning the determination of the legislation applicable.

8 The scope *ratione personae* of the regulation is defined in Article 2 of the general provisions in Title I. According to Article 2(1), the regulation applies, in particular, 'to employed or self-employed persons who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States'.

9 The terms 'employed person' and 'self-employed person' used by that provision are defined in Article 1(a) of the regulation. They refer to any person who is insured, whether as an employed or as a self-employed person, under one of the social security schemes referred to in Article 1(a).

10 Article 13(1), the first article in Title II of the regulation, which concerns the determination of the legislation applicable, provides that, subject to Article 14c, persons to whom the regulation applies are to be subject to the legislation of a single Member State only. Thus, according to Article 14a(2) of the regulation, a person who is normally self-employed in the territory of two or more Member States is to be subject to the legislation of the Member State in whose territory he resides.

11 Article 14c(1)(b) provides, however, that, in the cases mentioned in Annex VII, persons who are simultaneously employed in the territory of one Member State and self-employed in the territory of another Member State are subject to the legislation of each of those States as regards the activity pursued in its territory. Point 1 of Annex VII refers to persons who are self-employed in Belgium and gainfully employed in any other Member State, except Luxembourg.

12 Thus, the provisions of Title II, unlike those of Title I, refer not to employed or self-employed persons (*'travailleurs salariés'/'non-salariés'*) but to persons who are employed (or engaged in paid employment) and persons who are self-employed (*'personnes qui exercent une activité salariée'/'non-salariée'*). However, the two latter concepts are not defined by the regulation.

13 Mr Hervein and the Hervillier company maintain that they refer to national legislation in the field of labour law of the Member States where those activities are pursued. However, in France and Belgium, the essential distinguishing criterion in that respect is the relationship of subordination: a person who performs services for and under the authority of another person is 'employed'. Where there is no such relationship, the activity pursued should be described as independent irrespective of the social security scheme under which the person is insured.

14 The Belgian and French Governments and the Commission contend that 'employment' and 'self-employment' for the purposes of Title II of the regulation should be understood as meaning activities which are regarded as such for the purposes of the social security legislation of the Member State in which those activities are pursued. The Commission emphasizes that that interpretation, which is based on the definitions of 'employed person' and 'self-employed person' in Article 1(a) of the regulation, guarantees consistency between Article 2(1) and Title II of the regulation by ensuring that the conflict rules which the latter provides are applicable to any person falling with its scope.

15 It is settled case-law that in interpreting a provision of Community law it is necessary to consider not only its wording but also, where appropriate, the context in which it occurs and the objects of the rules of which it is part (see, in particular, Case 292/82 *Merck* v *Hauptzollamt Hamburg-Jonas* [1983] ECR 3781, paragraph 12).

16 Article 51 of the Treaty, which the regulation implements, provides for the coordination, not the harmonization, of the legislations of the Member States. Substantive and procedural differences between the social security systems of individual

Member States, and hence in the rights of persons working there, are unaffected by that provision (see, in particular, Case 41/84 *Pinna* v *Caisse d'Allocations Familiales de la Savoie* [1986] ECR 1, paragraph 20).

17 So, in order to define the persons who may rely upon the provisions on the coordination of the national social security schemes which it establishes, the regulation refers to persons who are insured under those schemes. Articles 1(a) and 2(1) together provide that the regulation is applicable to employed or self-employed persons who are or have been subject to the legislation of one or more Member States, and employed or self-employed persons must be understood as meaning persons who are insured as one or the other under a social security scheme. Thus, as the Commission rightly pointed out, the terms 'employed person' and 'self-employed person' in the regulation refer to the definitions given them by Member States' social security legislation, regardless of the nature of the activity for the purposes of employment law.

18 Article 13(1) of the regulation, which concerns the determination of the legislation applicable, further provides that, subject to Article 14c, 'persons to whom (the) regulation applies' are to be subject to the legislation of a single Member State only, such legislation being determined in accordance with the provisions of Title II.

19 The wording of that provision indicates that Title II concerns, in particular, the employed and self-employed persons to whom Article 2(1) of the regulation refers, as defined in Article 1(a) thereof.

20 In those circumstances, as the Court has held in today's judgment in Case C-340/94 *De Jaeck* v *Staatsecretaris van Financiën* [1997] ECR I-461, although the provisions of Title II refer to 'persons who are employed' (or 'engaged in paid employment') (*'personnes qui exercent une activité salariée'*) or

who are 'self-employed' (*'personnes qui exercent une activité non-salariée'*) rather than to 'employed' or 'self-employed persons' (*'travailleurs salariés'/'non-salariés'*), a logical and consistent interpretation of the scope *ratione personae* of the regulation and of the system of rules of conflict of laws which it establishes requires the terms in question of Title II to be interpreted in the light of the definitions in Article 1(a) of the regulation.

21 Accordingly, just as the description 'employed person' or 'self-employed person' for the purposes of the regulation depends on the national social security scheme under which the person is insured, 'a person who is employed' (or 'engaged in paid employment') and 'a person who is self-employed' for the purposes of Title II of the regulation should be understood to refer to activities deemed such by the legislation applicable in the field of social security in the Member State in whose territory those activities are pursued.

22 The reply to the question put by the national court should therefore be that for the purposes of Articles 14a and 14c of the regulation, 'employed' and 'self-employed' should be understood to refer to activities which are regarded as such for the purposes of the social security legislation of the Member State in whose territory those activities are pursued.

Costs

23 The costs incurred by the Belgian and French Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Tribunal du Travail, Tournai, by judgment of 6 June 1995, hereby rules:

For the purposes of Articles 14a and 14c of Regulation (EEC) No 1408/71 of the Council 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 (EEC) No 2001/83 of 2 June 1983, 'employed' and 'self-employed' should be understood to refer to activities which are regarded as such for the purposes of the social security legislation of the Member State in whose territory those activities are pursued.

Sevón Edward Puissochet

Jann Wathelet

Delivered in open court in Luxembourg on 30 January 1997.

R. Grass J. C. Moitinho de Almeida

Registrar President of the Fifth Chamber