JUDGMENT OF THE COURT
28 March 1996 *

In Case C-191/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal de Première Instance, Brussels, for a preliminary ruling in the proceedings pending before that court between

AGF Belgium SA

and

European Economic Community,

Institut National d'Assurance Maladie-Invalidité (INAMI),

Fonds National de Reclassement Social des Handicapés,

Croix-Rouge de Belgique,

Belgian State

* Language of the case: French.

on the interpretation of Article 3 of the Protocol on the Privileges and Immunities of the European Communities,

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris, J.-P. Puissochet (Rapporteur) and G. Hirsch (Presidents of Chambers), F. A. Schockweiler, J. C. Moitinho de Almeida, P. J. G. Kapteyn, P. Jann, H. Ragnemalm, L. Sevón and M. Wathelet, Judges,

Advocate General: F. G. Jacobs,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— the Commission of the European Communities, acting on behalf of the European Economic Community, by David Gilmour, Principal Legal Adviser, acting as Agent,

— the Fonds National de Reclassement Social des Handicapés, by Franklin Huisman, of the Brussels Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of the Institut National d'Assurance Maladie-Invalidité, represented by Jean-Jacques Masquelin, of the Brussels Bar; of the Belgian State, represented by Jan Devadder, Director of Administration at the Ministry of Foreign Affairs, Foreign Trade and Development Cooperation, acting as

Agent, assisted by Marc Libert, of the Brussels Bar; and of the Commission, represented by David Gilmour, at the hearing on 28 November 1995,

after hearing the Opinion of the Advocate General at the sitting on 15 February 1996,

gives the following

Judgment

1 By judgment of 23 June 1994, received at the Court on 1 July 1994, the Tribunal de Première Instance (Court of First Instance), Brussels, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions on the interpretation of Article 3 of the Protocol on the Privileges and Immunities of the European Communities (hereinafter 'the Protocol').

2 The questions were raised in proceedings between AGF Belgium SA (hereinafter 'AGF') and the European Economic Community, the Institut National d'Assurance Maladie-Invalidité (National Sickness and Invalidity Insurance Institution, hereinafter 'INAMI'), the Fonds National de Reclassement Social des Handicapés (National Rehabilitation Fund for the Handicapped, hereinafter 'FNRSH', whose functions, after its liquidation in 1995, were taken over by INAMI), the Croix-Rouge de Belgique (Belgian Red Cross, hereinafter 'CRB') and the Belgian State, in connection with the payment of additional motor insurance premiums.

3 Article 3 of the Protocol is worded as follows:

'The Communities, their assets, revenues and other property shall be exempt from all direct taxes.

The governments of the Member States shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Communities make, for their official use, substantial purchases the price of which includes taxes of this kind. These provisions shall not be applied, however, so as to have the effect of distorting competition within the Communities.

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.'

4 Belgian legislation provides for compulsory additional motor insurance premiums to be paid for the benefit of FNRSH (Article 24 of the Law of 16 April 1963 and Royal Decrees of 5 July 1963, 23 October 1978 and 28 June 1984), INAMI (Article 121 of the Law of 9 August 1963, as supplemented by Article 57 of the Law relating to the 1974-1975 Budgetary Proposals and by Article 31 of the Law of 26 June 1992, and Royal Decrees of 20 May 1976 and 20 July 1992) and CRB (Law of 7 August 1974 and Royal Decree of 16 December 1974, as amended by Royal Decrees of 21 January 1976 and 20 March 1991).

5 The European Communities, which had concluded contracts with AGF for third party liability insurance for motor vehicles used by various Community institutions, refused to pay the additional premiums provided for under the Belgian

legislation, on the grounds that the sums claimed on that basis represented national taxes from which they were exempt under Article 3 of the Protocol.

6 AGF, which had had to advance the amount represented by the additional premiums to the recipient institutions, instituted proceedings in the Tribunal de Première Instance, Brussels, for an order that either the EEC or the institutions in question and the Belgian State jointly pay it the appropriate sums.

7 The Tribunal de Première Instance considered that the dispute turned on the interpretation of Article 3 of the Protocol and accordingly decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is Article 3 of the Protocol to be interpreted as being applicable to charges which may be regarded under national [law] as social contributions on the grounds that, although they are levied by the authorities and by law, they are not governed by constitutional rules which provide that taxes are collected annually and apply universally, and are not paid to the Treasury but are collected directly by the institutions responsible for using them?

2. Is the third paragraph of Article 3 of the Protocol to be interpreted as being applicable to charges collected by way of additional insurance premiums (in the present case motor vehicle third party liability insurance) for the benefit of public utility organizations such as the INAMI, FNRSH or CRB, in view of the fact that there is a relationship, albeit indirect and potential, between those charges and the service provided by those organizations?

3. Is the second paragraph of Article 3 of the Protocol to be interpreted as being applicable to indirect taxes or dues levied on services provided for the official use of the Communities, where substantial sums are involved?'

First question

8 By its first question the national court wishes to ascertain whether the charges in question, which appear to that court to have more in common with social contributions than with tax resources, in so far as they are not paid to the Treasury but to the recipient institutions, must nevertheless be regarded as taxes or dues within the meaning of Article 3 of the Protocol.

9 The Commission proposes that the question should receive an affirmative reply. It considers, in particular, that the charges fulfil the criteria used by international organizations to define the term 'tax', which extends to all compulsory payments made without consideration for the benefit of public authorities. The Commission also refers to the case-law of the Court of Justice, according to which special contributions for the benefit of public bodies other than the State constitute internal taxation within the meaning of Article 95 of the Treaty.

10 INAMI, FNRSH and the Belgian Government, however, suggest a negative reply. In their view, the additional premiums in question, even though they are charged by an authority for the purpose of defraying charges for which the community is responsible, are not intended to cover general expenses included in the State budget. The charges are similar to social contributions which, according to the case-law of the Court, do not constitute taxes, so that they do not fall within the scope of Article 3 of the Protocol.

11 That argument cannot be accepted.

12 It is true that, in interpreting certain provisions of the Protocol, the Court has distinguished between a tax intended to provide for the general expenses of public authorities and a contribution intended to finance a social security scheme, even if

such a contribution is levied in a manner resembling the levying of taxes (see Case 23/68 *Klomp* v *Inspektie der Belastingen* [1969] ECR 43, paragraphs 18 to 22).

13 That distinction has no relevance, however, in the circumstances described by the national court.

14 First, as the Commission points out, that judgment concerned the interpretation of provisions of the Protocol which exempt officials and other servants of the Communities from national taxes on salaries, wages and emoluments paid to them. That exemption relates specifically to servants of the Communities and is limited to national taxes which could be charged on the income arising from performance of their functions, which is subject to Community tax. In the present case the provisions of the Protocol in issue are those which exempt the Communities themselves from all direct taxes and provide, furthermore, for the amount of indirect taxes or sales taxes included in purchases made by them in certain circumstances to be remitted or refunded.

15 Secondly, as the Advocate General observed in points 21 and 22 of his Opinion, social bodies may be funded both by special contributions and by taxation. The mere fact that the additional premiums at issue in this case are intended to contribute to such financing does not therefore mean that those supplements should be regarded as social contributions.

16 On the contrary, however they are described under national law, the charges in question cannot be treated as contributions due from persons subject to a social security scheme or from members of a social insurance body. It appears, in fact, from the information contained in the national court's judgment that the additional premiums are payable by all those who take out motor insurance, including

those who are not covered in any respect by the recipient institutions; they are thus payable regardless of whether the person concerned is subject to, or a member of, those bodies.

17 In the light of those considerations, charges of that type must be regarded as compulsory contributions for the benefit of public interest institutions. It may be noted, moreover, that the additional premiums in question appear as such in the Report of the Office Belge de Contrôle des Assurances (Belgian Insurance Inspectorate) annexed to the Commission's observations, which lists the different taxes and contributions linked to insurance.

18 As the Commission states, contributions of that kind constitute internal taxation as referred to in the fiscal provisions of the Treaty. According to the case-law of the Court, the fact that a tax or levy is collected by a body governed by public law other than the State or is collected for its benefit and is a charge which is special or appropriated for a specific purpose cannot prevent its falling within the scope of those provisions (see Case 74/76 *Iannelli & Volpi* v *Meroni* [1977] ECR 557, paragraph 19).

19 In accordance with Article 28 of the Treaty establishing a Single Council and a Single Commission of the European Communities, to which the Protocol is annexed, the European Communities are to enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks. The fiscal immunity granted to them in that connection, in order in particular to ensure their independence with regard to the Member States and their proper functioning, is defined by the Protocol in very broad terms. Thus Article 3 provides not only that the Communities, their assets, revenues and other property shall be

exempt from all direct taxes, but also that the Member States are to remit or refund the amount of indirect taxes or sales taxes included in the price of substantial purchases made by the Communities for their official use.

20 Subject solely to the reservations mentioned in the second and third paragraphs of Article 3 of the Protocol, that immunity covers all types of taxation, whether direct or indirect, and must therefore be regarded as extending to contributions or taxes of any type nature which constitute internal taxation under Community law.

21 Accordingly, the answer to the first question must be that Article 3 of the Protocol is to be interpreted as covering compulsory charges, such as additional motor insurance premiums, intended to contribute to the financing of public interest institutions.

Second question

22 By its second question the national court seeks to ascertain whether the charges in question may be regarded as taxes or dues which merely constitute remuneration for public utility services within the meaning of the third paragraph of Article 3 of the Protocol, for which no exemption is granted.

23 The Commission considers that since they bear no relation either to the amount of supplies furnished or the value of services actually rendered, those charges constitute a general tax rather than remuneration for a service. It points out in that connection that neither the Community nor its officials are affiliated to the Belgian social security scheme and that they receive no benefits from it.

24 INAMI, FNRSH and the Belgian Government maintain, conversely, that the additional premiums do in fact contribute to the remuneration of a public utility service.

25 As the Court has already held, the distinction between a tax intended to provide for the general expenses of public authorities and a due constituting consideration for a given service, which is recognized in the national law of various Member States, is expressly recognized by Article 3 of the Protocol (see Case 32/67 *Van Leeuwen* v *Rotterdam* [1968] ECR 43).

26 On that point it should be noted that the very concept of consideration for a specific service presupposes that that service is provided, or at least may be provided, to those paying the charge. A contribution cannot therefore constitute mere remuneration for public utility services, within the meaning of the third paragraph of Article 3 of the Protocol, unless such services are provided, or at least are capable of being provided, to those who have to pay the contribution.

27 As was pointed out in paragraph 16 of this judgment, the additional motor insurance premiums must be paid by all those who take out insurance whether or not they will benefit from the services provided by the recipient institutions, and give no entitlement to specific provision of such services. In that connection it should be emphasized, as the Commission does, that neither the Communities nor their servants under the Staff Regulations are affiliated to the Belgian social security scheme and that they receive no benefits from it.

28 The reply to the second question must be therefore that the third paragraph of Article 3 of the Protocol is to be interpreted as not applicable to compulsory charges, such as additional motor insurance premiums, which are intended to

contribute generally to the financing of public interest institutions and which do not constitute consideration for a specific service.

Third question

29 By its third question the national court asks whether the second paragraph of Article 3 of the Protocol, which refers to the remission or refund of indirect taxes or sales taxes included in the price of movable or immovable property, where the Communities make substantial purchases for their official use applies to taxes and dues levied on services provided in the same circumstances.

30 The Commission, which considers that the charges in question could equally be regarded as direct or as indirect taxes, claims that in any event remission of the taxes and dues referred to in the second paragraph of Article 3 of the Protocol applies where purchases of goods or services have been made, the amount of which exceeds the threshold laid down by national legislation.

31 INAMI and FNRSH consider, on the other hand, that the additional motor insurance premiums are not taxes included in the price at the time of purchase and are not, therefore, covered by the second paragraph of Article 3 of the Protocol.

32 As Advocate General Jacobs states in points 37 and 38 of his Opinion, the absence of an express reference to services in the second paragraph of Article 3 of the Protocol can be explained by the greater importance attached historically to the taxation of goods and does not justify the conclusion that the authors of the Protocol intended payment for services to be excluded from the scope of that provision.

33 Indirect taxes and sales taxes included in the price of movable or immovable property relate in general not only to the purchase of material goods but also to the acquisition of rights of different kinds. Thus value added tax, which constitutes the principal sales tax included in the price of an item, is levied not just on purchase as such but on all forms of supply, including rental contracts, which enable goods to be made available under certain conditions without transfer of legal ownership, as well as different forms of provision of services.

34 In view of the purpose of the fiscal immunity granted to the Communities, there is no valid reason to limit the remission or refund of indirect taxes or sales taxes to purchases of goods *stricto sensu* and to exclude remission for transactions relating to the provision of services. If those transactions are necessary to accomplish the task of the Communities and their amount allows them to be described as substantial in relation to the values fixed by the legislation in question, they should all be capable of giving rise to remission or refund of taxes included in their price.

35 It is clear, moreover, from the documents produced by the Commission and the Belgian Government in reply to a written question put by the Court that the measures taken by the Member States pursuant to the second paragraph of Article 3 of the Protocol for the purpose of exemption from or reimbursement of indirect taxes and sales taxes cover the supply of services in the same way as the supply of goods.

36 Accordingly the reply to the third question must be that the second paragraph of Article 3 of the Protocol is to be interpreted as meaning that the remission or refund of the amount of indirect taxes or sales taxes for which it provides applies to all types of purchase, including obtaining a supply of services, which are necessary for the accomplishment of the Communities' task, and the amount of which exceeds the threshold laid down by the legislation in question.

Costs

37 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,

in answer to the questions referred to it by the Tribunal de Première Instance, Brussels, by judgment of 23 June 1994, hereby rules:

1. **Article 3 of the Protocol on the Privileges and Immunities of the European Communities is to be interpreted as covering compulsory charges, such as additional motor insurance premiums, intended to contribute to the financing of public interest institutions.**

2. **The third paragraph of Article 3 of the Protocol is to be interpreted as not applicable to compulsory charges, such as additional motor insurance premiums, which are intended to contribute generally to the financing of public interest institutions and which do not constitute consideration for a specific service.**

3. **The second paragraph of Article 3 of the Protocol is to be interpreted as meaning that the remission or refund of the amount of indirect taxes or sales taxes for which it provides applies to all types of purchase, including obtaining a supply of services, which are necessary for the accomplishment of the Communities' task, and the amount of which exceeds the threshold laid down by the legislation in question.**

Rodríguez Iglesias Kakouris Puissochet

Hirsch Schockweiler Moitinho de Almeida

Kapteyn Jann Ragnemalm

Sevón Wathelet

Delivered in open court in Luxembourg on 28 March 1996.

R. Grass G. C. Rodríguez Iglesias

Registrar President