Reports of Cases

OPINION OF ADVOCATE GENERAL
SHARPSTON
delivered on 27 September 2012[1]

Case C-379/11

Caves Krier Frères S.àr.l.
v
Directeur de l'Administration de l'emploi

(Reference for a preliminary ruling from the Cour administrative (Luxembourg))

(Freedom of movement for workers — Articles 21 and 45 TFEU — National legislation — Reimbursement by a Member State of social security contributions to employers that recruit unemployed workers aged 45 and over who register with the competent authorities in that State — Restriction — Justification)

1. In Luxembourg, employers who recruit unemployed workers aged 45 and over are eligible to receive a recruitment subsidy.[2] The subsidy takes the form of a reimbursement to the employer of social security contributions paid in respect of the worker recruited. However, the worker concerned must have been registered as a job seeker with a placement office of the Luxembourg employment administration.[3] The Cour administrative (Administrative Court of Appeal) (Luxembourg) asks whether such a condition is compatible with Articles 21 and 45 TFEU concerning, respectively, the right of citizens to move and reside freely, and freedom of movement for workers, within the European Union.

Legislation

EU law

Treaty provisions

2. Under Article 21 TFEU, every citizen of the Union has the right to move and reside freely within the territory of the Member States.

3. Article 45 TFEU states:

'1. Freedom of movement for workers shall be secured within the Union.

1 — Original language: English.
2 — See point 9 below.
3 — Administration de l'emploi ('ADEM').

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.'

4. Paragraphs 1 and 2 of Article 45 TFEU are subject to the possibility for Member States to introduce limitations that are justified on grounds of public policy, public security or public health, as provided in Article 45(3).

Regulation No 1408/71

5. Regulation No 1408/71 [4] coordinates Member States' social security legislation in order to protect the social security rights of persons moving within the EU. [5] All workers, including frontier workers, are within the scope of that regulation. [6] It provides that persons resident within the territory of the EU are to be subject to the same obligations and enjoy the same social security benefits under the legislation of any Member State as the nationals of that State. [7] Legislation concerning unemployment benefits is included in the list of matters covered by the regulation (Article 4(1)(g)). Such benefits are not only pecuniary, but include assistance in finding new employment which the employment services of a Member State provide to workers who make themselves available to those services. [8]

6. The provisions of Title II of Regulation No 1408/71 ('Determination of the legislation applicable') constitute a complete and uniform system of conflict rules the aim of which is to ensure that workers moving within the Union are subject to the social security scheme of only one Member State. [9] Thus, Article 13 provides:

'1. Subject to Article 14c, persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. That legislation shall be determined in accordance with the provisions of this Title.

2. Subject to Articles 14 to 17:

(a) a person employed in the territory of one Member State shall be subject to the legislation of that State even if he resides in the territory of another Member State or if the registered office or place of business of the undertaking or individual employing him is situated in the territory of another Member State;

…'

4 — 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. At the time when the present proceedings arose, the applicable version was that contained in Annex A, Part I, to Council Regulation (EC) No 118/97 of 2 December 1996 amending and updating Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ 1997 L 28 p. 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) repealed and replaced Regulation No 1408/71 from 1 May 2010, when it was brought into effect by 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 (OJ 2009 L 284, p. 1). Article 90 of Regulation No 883/2004 states that Regulation No 1408/71 is nevertheless to continue to have legal effects for the purposes of certain acts that are not relevant to the present proceedings.

5 — See the first to the fifth recitals in the preamble to Regulation No 1408/71.

6 — Article 1(a). A frontier worker is defined in Article 1(b) as any employed or self-employed person who pursues his occupation in the territory of a Member State and resides in the territory of another Member State to which he returns as a rule daily or at least once a week.

7 — Article 3(1).

8 — Case 1/85 *Miethe* [1986] ECR 1837, paragraph 16.

9 — Case C-131/95 *Huijbrechts* [1997] ECR I-1409, paragraph 17 and case-law cited.

7. Chapter 6 of Title III contains special provisions relating to unemployment benefits. Article 71 lays down rules that apply to an unemployed person who was formerly employed and who, during his last employment, was residing in the territory of a Member State other than the competent State. It contains different rules according to whether an unemployed worker is a frontier worker (Article 71(1)(a)) or 'other than a frontier worker' (Article 71(1)(b)). In relation to frontier workers, Article 71(1)(a) provides an exception to the general rule laid down in Article 13(2)(a). It states:

'1. An unemployed person who was formerly employed and who, during his last employment, was residing in the territory of a Member State other than the competent State shall receive benefits in accordance with the following provisions: [10]

(a) (i) A frontier worker who is partially or intermittently unemployed in the undertaking which employs him, shall receive benefits in accordance with the provisions of the legislation of the competent State as if he were residing in the territory of that State; these benefits shall be provided by the competent institution.

(ii) A frontier worker who is wholly unemployed shall receive benefits in accordance with the provisions of the legislation of the Member State in whose territory he resides as though he had been subject to that legislation while last employed; these benefits shall be provided by the institution of the place of residence at its own expense.

…'

8. A worker who is 'other than a frontier worker' and thus comes within Article 71(1)(b) has a choice: he may apply to the competent authorities for unemployment benefits in the State where he was last employed or claim those benefits in his State of residence. [11]

National law

9. The national measure at issue is the first subparagraph of Article L.541-1 of the Code du travail ('the Labour Code'). This provides for reimbursement of social security contributions ('the recruitment subsidy') in the following terms:

'When an employer in the private sector recruits an unemployed worker, the employment fund shall reimburse both the employer's and the employee's share of social security contributions to the employer, regardless of whether the worker had previously been receiving unemployment benefit but on condition that he is over 45 years of age and had been registered as a job seeker with a placement office of [ADEM] for at least one month.'

10. The third subparagraph of Article L.541-1 provides that the registration condition does not apply to job seekers aged 40 and above who are affected by an employment maintenance plan (a 'redundancy plan') as defined in Article L.513-3 of the Labour Code. [12]

11. Article L.622-6(1) states: 'All unemployed persons seeking work are obliged to register as job seekers with [ADEM].'

10 — The competent State is the Member State in whose territory the competent institution is situated (Article 1(q)). The word 'institution' is defined in Article 1(n) as the body or authority responsible for administering all or part of the social security legislation. The competent institution is determined in accordance with Article 1(o): it includes inter alia the institution with which the person concerned is insured at the time of the application for benefit.

11 — See for example, Case C-454/93 *van Gestel* [1995] ECR I-1707, paragraph 23.

12 — Article L.513-1 of the Labour Code requires the social partners to establish a redundancy plan where an undertaking makes five or more people redundant at one time.

Facts, procedure and the question referred

12. Ms Krier was born on 30 July 1955. She is a Luxembourg national who lives with her family in Germany. On 1 May 2008, Caves Krier Frères S.àr.l. ('Caves Krier'), a Luxembourg firm, recruited Ms Krier, who was then 52, on a permanent contract. Ms Krier has always worked in Luxembourg, although immediately prior to starting work with Caves Krier she had been unemployed following her previous employer's decision to make her redundant. During that period Ms Krier had registered with the German authorities as being unemployed, and accordingly she received unemployment benefits in her country of residence.

13. On 2 September 2008 Caves Krier submitted an application to ADEM for the recruitment subsidy in respect of its decision to recruit Ms Krier. By decision of 4 September 2008, the director of ADEM rejected that request on the ground that Ms Krier had not registered as a job seeker with ADEM, as required by the national measure at issue. On 11 January 2010, Caves Krier brought an action before the Tribunal administratif (Administrative Court of First Instance) seeking annulment of that decision.

14. By judgment of 14 July 2010, the Tribunal administratif dismissed Caves Krier's application. It held that the situation of an unemployed person who resides in Luxembourg and is, accordingly, able to register as unemployed with ADEM is not comparable to that of an unemployed person who, not being resident in Luxembourg, cannot register with ADEM, and who must on the contrary register with the employment office of his country of residence.

15. On 12 August 2010, Caves Krier appealed against that judgment to the Cour administrative.

16. That court considers that a question of EU law arises concerning the conditions for the grant of the recruitment subsidy under the national measure at issue, and in particular that relating to the registration condition. [13] The court states that 'it is undisputed that only those residing on the territory of Luxembourg may register, while those who do not so reside may not, which in effect means that the recruitment subsidy is reserved for employers who recruit unemployed persons resident in Luxembourg'.

17. The referring court noted that the State, not being represented in the proceedings before it, had not had an opportunity to establish whether such a residence restriction was based on objective considerations of public interest independent of the nationality of the persons concerned and proportionate to the legitimate objective of the national measure at issue. The national court considers that it is not able to justify those measures of its own motion. Accordingly it decided to stay proceedings and refer the following question to the Court:

'Is the first subparagraph of Article L.541-1 of the Luxembourg Labour Code compatible with EU law, and more particularly with Articles 21 and 45 [TFEU], in so far as it subjects the right of private-sector employers to reimbursement of both the employer's and the employee's share of social security contributions upon the recruitment of unemployed persons aged over 45 years, regardless of whether they were receiving unemployment benefit, to the condition that the unemployed persons must have been registered as job seekers with a placement office of [ADEM] for at least one month, while employers who recruit unemployed persons registered as job seekers with equivalent foreign bodies do not benefit from that measure?'

18. Written observations have been submitted by Caves Krier, by the Governments of Luxembourg, the Czech Republic, Austria and Poland and by the Commission.

13 — Prior to making the present reference, the Cour administrative sought and obtained from the Cour constitutionelle (Constitutional court) a preliminary ruling as to the compatibility of the national measure at issue with Article 10a(1) of the Luxembourg Constitution.

19. Caves Krier, Luxembourg, the Czech Republic and the Commission made oral submissions at the hearing on 21 June 2012.

Assessment

Preliminary observations

20. Austria contends that the national court's question is inadmissible for the following reasons. First, the order for reference is unclear in so far as it fails to specify whether the national measure at issue introduces a residence condition or a registration requirement. Accordingly, Austria argues that the national court has failed to define the factual and legislative context of the question in a manner that enables the Court to give a useful reply.[14] Second, the national court refers to the fact that the registration requirement does not apply to workers who are made redundant pursuant to a redundancy plan.[15] Yet the national court has not included the relevant provisions of national law in its order for reference. Third, Austria – supported in this submission by the Czech Republic – contends that the question posed by the national court is hypothetical in so far as the national measure at issue did not actually prevent Ms Krier from exercising her right to freedom of movement and obtaining employment in Luxembourg.

21. In my view the question is admissible.

22. First, it seems to me that the national court has defined the essential elements of the domestic legislative context and the origin of the dispute at national level with sufficient clarity to enable the Court to identify the points for determination and to examine the question referred for preliminary ruling. Moreover, the parties in their observations have been able to address the issues that arise and make their submissions accordingly. Therefore, I consider that the Court is able to give a ruling on the question raised.

23. Second, it is not contended that Ms Krier is a worker made redundant pursuant to a social plan and thus exempt from the registration requirement by virtue of Article L.541-1, third subparagraph of the Labour Code. There is therefore no need to examine whether such an arrangement is precluded by Articles 21 or 45 TFEU.

24. Third, in relation to the submission that the national court's question is hypothetical, it is necessary to consider the following issues.

25. It is not disputed that Ms Krier is a frontier worker and that she is entitled to invoke her rights to freedom of movement under Article 45 TFEU. She has exercised those rights by choosing to reside outside Luxembourg, her country of origin, although she works in that State.

26. It is settled law that national provisions which preclude or deter a national of a Member State from leaving their country of origin in order to exercise their rights to freedom of movement constitute restrictions on that freedom even if they apply without regard to the nationality of the worker concerned.[16]

14 — Austria relies upon Case C-237/04 *Enirisorse* [2006] ECR I-2843, paragraphs 17 to 19.

15 — See point 10 above.

16 — Case C-325/08 *Olympique Lyonnais* [2010] ECR I-2177, paragraphs 33 and 34 and case-law cited.

27. In examining the national court's question it is therefore necessary to consider whether Ms Krier is at a disadvantage because she resides in Germany and thus cannot register with ADEM. A consequence of Ms Krier's position is that her employer, Caves Krier, is unable to obtain the recruitment subsidy in respect of its decision to recruit her.

28. The Court has held that in order to be truly effective, the right of workers to be engaged and employed necessarily entails as a corollary the employer's entitlement to engage them in accordance with the rules governing freedom of movement for workers. [17]

29. In that light, I do not consider that the national court's question is hypothetical. The issue for consideration is whether Caves Krier, as Ms Krier's employer, is at a disadvantage because it was denied payment of the recruitment subsidy for older workers upon engaging Ms Krier. That is not a hypothetical question; it has given rise to a genuine dispute at national level which requires resolution. Moreover, the point at issue concerns Ms Krier's rights as a frontier worker to reside in one Member State whilst working in another. The question is whether the national measure at issue creates a hindrance to exercising those rights which places a person such as Ms Krier at a disadvantage. [18]

30. Finally, however, I consider it necessary to propose a ruling only on the interpretation of Article 45 TFEU. Article 21 TFEU sets out the right of every citizen of the European Union to move and reside freely within the territory of the Member States. It finds specific expression in Article 45 TFEU in relation to the free movement of workers. Inasmuch as the main proceedings fall within the scope of the latter provision, it seems to me that it is unnecessary to rule separately on the interpretation of Article 21 TFEU. [19]

The existence of a restriction on freedom of movement for workers

The nature of the restriction at issue

31. In its question, the national court describes the recruitment subsidy as being subject to the condition that the unemployed persons recruited have been registered as work seekers with a placement office of ADEM. It explains further that 'it is undisputed that only those residing on the territory of Luxembourg may register, while those who do not so reside may not, which in effect means that the recruitment subsidy is reserved for employers who hire unemployed persons resident in Luxembourg'.

32. Luxembourg disputes the national court's interpretation of the national measure at issue. It contends that registration with ADEM is not limited to workers who reside in Luxembourg. Furthermore, Luxembourg argues that all EU citizens are entitled to register with ADEM. It states that there is no nationality requirement that applies to registration. Thus, an unemployed worker like Ms Krier, who lives in Germany and is registered there as unemployed and accordingly receives unemployment benefits in Germany, could also register with ADEM in Luxembourg for the purpose of seeking employment in that State. Luxembourg submits that there is therefore no restriction under Article 45 TFEU.

33. Caves Krier and the Commission agree with the national court's interpretation and consider that the effect of the national measure at issue is to impose a residence requirement for registration with ADEM.

17 — Case C-208/05 *Innovative Technology Center* [2007] ECR I-181, paragraph 23.

18 — See points 37 to 39 below.

19 — *Innovative Technology Center*, cited in footnote 17 above, paragraphs 63 to 65 and case-law cited.

34. The national measure at issue is silent on whether there is such a residence requirement. However, I note that three levels of court in Luxembourg [20] have interpreted that measure on the footing that such a residence condition does indeed apply.

35. As regards the interpretation of provisions of national law, the Court is in principle required to base its consideration on the description in the order for reference. It is settled case-law that the Court of Justice does not have jurisdiction to interpret the internal law of a Member State. [21] In the preliminary reference procedure, the functions of the Court of Justice and of the referring court are clearly separate, and it falls exclusively to the latter to interpret national legislation. [22]

36. Accordingly, I consider that any assessment of whether Article 45 TFEU precludes a requirement for prior registration as a job seeker, when such registration is a condition for the availability of a recruitment subsidy for a potential employer, must be based on the national measure at issue as it is interpreted by the national court seeking a preliminary ruling – that is, as comprising a residence requirement.

Residence requirement

37. In so far as, for the purposes of the national measure at issue, residence in Luxembourg is a condition for registration with ADEM and registration with ADEM is a condition for availability of the recruitment subsidy, a Luxembourg employer wishing to recruit an unemployed worker over the age of 45 is more likely to recruit a worker resident in Luxembourg, in respect of whom the subsidy will normally be available, [23] than a frontier worker, in respect of whom it will not.

38. Thus, it is likely to be more difficult for unemployed workers over 45 residing outside Luxembourg to obtain employment in that State. Such a condition is therefore likely to discourage such persons from moving to reside in a neighbouring State.

39. Accordingly, I am of the view that a residence requirement such as that at issue in the main proceedings is a restriction on freedom of movement for workers within the European Union guaranteed by Article 45 TFEU.

40. The national court explains that it seeks guidance on whether a residence requirement might nevertheless be justified. It emphasises that the Luxembourg Government, not being party to the main proceedings, has not had the opportunity of establishing whether such an obstacle is justified for the purposes of Article 45 TFEU and that it is itself unable to put forward grounds of justification of its own motion.

41. It is settled law that an obstacle to freedom of movement for workers can be accepted only if it pursues a legitimate aim compatible with the Treaty and is justified by overriding reasons in the public interest. Even if that were so, application of that measure would still have to be such as to ensure achievement of the objective in question and not go beyond what is necessary for that purpose. [24]

20 — The tribunal administratif, the Cour constitutionelle when considering the preliminary question referred to it (see footnote 13) and the referring court (the Cour administrative). I add that almost all of the publicly available information on the ADEM website conveys that impression (see www.adem.public.lu/demandeur/placement/index.html).

21 — Joined Cases C-128/10 and C-129/10 *Naftiliaki Etaireia Thasou* [2011] ECR I-1885, paragraph 40 and case-law cited.

22 — Case C-500/06 *Corporación Dermoestética* [2008] ECR I-5785, paragraph 21.

23 — Article L.622-6(1) of the Labour Code, which applies to all persons resident in Luxembourg, makes it mandatory for an unemployed person seeking work to register as a job seeker with ADEM (see point 11 above).

24 — *Olympique Lyonnais*, cited in footnote 16 above, paragraph 38 and case-law cited.

42. Thus, it is for the Member State, where its authorities adopt a measure derogating from a fundamental freedom, to show that that measure is appropriate for securing the attainment of the objective relied upon and does not go beyond what is necessary to attain it. Accordingly, the reasons invoked by a Member State by way of justification should be accompanied by an analysis of the appropriateness and proportionality of the measure adopted by that State and by specific evidence substantiating its arguments. [25]

43. In the preliminary reference procedure (unlike in an infringement action under Article 258 TFEU) it is for the national court, not the Court, to determine whether the national measure at issue is justified. [26] The role of the Court is to provide the national court with guidance. However, that is particularly difficult where the description of the factual and legal context is incomplete in certain respects (albeit not to the extent that the reference is inadmissible [27]), thereby preventing the Court from replying with the precision that it would wish to the questions raised. Thus, the Court may have to leave open certain aspects. [28]

44. Prior to the hearing the Court invited Luxembourg to address the question of justification, which had not been covered in its written observations. In spite of a further express request (made at the hearing) for assistance on the issue of justification, Luxembourg declined to advance any arguments in that regard.

45. In the absence of any information indicating whether a residence condition such as that at issue pursues a legitimate aim, it seems to me that the Court is not in a position to give any guidance as to whether it is proportionate in relation to achieving that aim. When the national court examines that question, the following comments may nevertheless be of assistance.

46. Where residence is an absolute condition for registration, it necessarily has the effect of preventing a person in Ms Krier's situation from being able to register with the competent authorities. As a consequence, an employer who recruits such a person is automatically ineligible for the recruitment subsidy. A residence condition such as that described by the national court thus has such a sweeping effect that it is unlikely to be proportionate, even if the competent national authorities are able to demonstrate that it has a legitimate aim. [29]

47. Therefore I would consider that such a residence condition is precluded by Article 45 TFEU in so far as it determines whether the recruitment subsidy will be available or not to a prospective employer of an unemployed person over 45, to whom that condition applies.

Registration requirement

48. In so far as the national court states that it seeks guidance on the question whether a *residence* condition for *registration* is precluded by Article 45 TFEU, there is no need to assess whether a simple registration requirement is an obstacle of itself. However, since Luxembourg insists that the national measure at issue does not impose a residence condition, and given that the Member States submitting observations have examined that measure as though it were a simple registration condition, I shall consider that position in the alternative.

25 — Case C-73/08 *Bressol and Chaverot* [2010] ECR I-2735, paragraph 71. See also Case C-542/09 *Commission* v *Netherlands* [2012] ECR, paragraph 81.

26 — *Bressol and Chaverot*, cited in footnote 25 above, paragraph 74.

27 — See point 22 above.

28 — Case C-236/98 *Jämställdhetsombudsmannen* [2000] ECR I-2189, paragraph 34.

29 — See for example, Case C-224/98 *D'Hoop* [2002] ECR I-6191, paragraph 39.

49. Regulation No 1408/71 is not directly in point. The recruitment subsidy is not a social security benefit that is covered by that measure. Moreover, Ms Krier's application for unemployment benefits is not the object of the main proceedings. None the less, Austria contends that Regulation No 1408/71 provides the reference point for assessing the social advantage, namely the recruitment subsidy, in the present matter. [30] Poland submits that, since Ms Krier is a frontier worker, it follows from the Court's case-law on Article 71 of Regulation No 1408/71, in particular *Miethe*, [31] that she is entitled to choose whether to register for unemployment benefits in Germany, her State of residence, or Luxembourg, her State of last employment. Given that she chose to register in her State of residence rather than in Luxembourg, her failure to meet the registration condition contained in the national measure at issue is due to her personal choice rather than the measure itself. The Commission submits that Ms Krier is entitled under Regulation No 1408/71 to register in both Germany and Luxembourg, but that she is precluded from doing so by the terms of the national measure at issue.

50. In general, registration with ADEM indicates inter alia that the person concerned is seeking work, available to accept offers of employment and entitled to make use of ADEM's placement services. Where the person qualifies, registration may also lead to payment of unemployment benefits by ADEM. However, registration is open to persons regardless of whether ADEM also pays unemployment benefits to them.

51. Article 13(2) of Regulation No 1408/71 determines the national legislation applicable to a worker's claim for unemployment benefits. [32] However, it does not lay down the conditions creating the right or the obligation to become affiliated to a social security scheme. [33] Generally, the competent State in relation to unemployment benefits is the State where the unemployed person was last employed. [34] It is in principle that Member State which is responsible for paying those benefits and providing ancillary non-pecuniary benefits, such as assistance in finding new employment.

52. However, Article 71(1)(a) provides an exception to that principle in respect of frontier workers. It is clear from Article 71(1)(a)(ii) that a frontier worker who is wholly unemployed is not entitled to unemployment benefit in the State where he was last employed, even if he paid contributions there, but is entitled to claim benefits from the Member State in which he resides. [35]

53. In *Miethe*, the Court further held that a worker to whom Article 71(1)(a)(ii) applies may also, in exceptional circumstances, be considered to be 'other than a frontier worker' where he has particularly strong links with the State of last employment and thus might fall within Article 71(1)(b). Such a worker may choose to receive unemployment benefits from the Member State of last employment rather than the Member State of residence. [36]

30 — Both Austria and the Commission refer to the provisions of Regulation No 883/2004 in their written observations. Since that measure was not in force at the relevant time, however (see footnote 4 above), I have referred to Regulation No 1408/71 in this Opinion.

31 — Cited in footnote 8 above.

32 — See point 6 above.

33 — *Huijbrechts*, cited in footnote 9 above, paragraph 17 and case-law cited.

34 — *Huijbrechts*, cited in footnote 9 above, paragraph 21 and case-law cited.

35 — *Miethe*, cited in footnote 8 above, paragraphs 9 to 11. Those paragraphs draw a clear distinction between workers *other* than frontier workers, who exercise the choice given by Article 71(1)(b) by making themselves available either to the employment services of the Member State in which they were last employed or to those offered by the Member State in which they reside and frontier workers who are covered by Article 71(1)(a) and who have no such choice. The relevance of *Miethe* in light of Regulation No 883/2004 is currently being examined by the Court in Case C-443/11 *Jeltes*.

36 — *Miethe*, paragraphs 17 and 18.

54. If Ms Krier's position was governed by Article 71(1)(a) (which seems to be the case), she had no choice over where to register for unemployment benefit. She was obliged to do so in Germany, her State of residence. On the other hand, if she was (exceptionally) to be considered 'other than a frontier worker' following the *Miethe* case-law, but she nevertheless chose to register in Germany, she could not aggregate unemployment benefits from both Luxembourg and that State.[37] Therefore, if she received payment of unemployment benefit in Germany, she also had to make herself available to the competent authorities in that State for work.

55. However, it does not follow that Luxembourg is prohibited from conferring entitlement to register with ADEM on persons like Ms Krier with regard to providing assistance in obtaining work in that State. Nor would EU law prevent unemployed frontier workers from registering with ADEM for that purpose. In such circumstances, as a corollary, employers who recruited such persons would be eligible to apply for grant of the recruitment subsidy.

56. It is true, as the Luxembourg Government contends, that the registration condition does not discriminate directly on grounds of nationality.

57. Thus, (in the absence of a residence requirement) frontier workers like Ms Krier would in principle be eligible to register with ADEM.

58. Given that unemployed frontier workers are obliged under Article 71 of Regulation No 1408/71 to register in their Member State of residence in order to receive payment of unemployment benefits, the question then becomes whether an additional requirement to register also with the competent authorities in the State of last employment constitutes a restriction for the purposes of Article 45 TFEU, in so far as such persons are subject to an additional burden that does not apply to workers who reside in Luxembourg, who do not have to register with two competent authorities in order for the subsidy to be granted to a potential employer.

59. It seems to me that, although (on this hypothesis) frontier workers would certainly be obliged to register in two Member States, such a situation would not result in a restriction to their freedom of movement.

60. First, by virtue of the nature of their position as frontier workers such persons are used to dealing with matters in both their Member State of residence and the Member State in which they are employed. Second, the process of registering is likely to comprise completion of a form, possibly online, and may also include an interview. It is unlikely therefore, to be so administratively burdensome and/or costly that it constitutes an impediment. Third, it is in the frontier worker's interests to seek employment in the Member State where he/she has the best prospects of success in finding new work. Accordingly, such persons are likely to be motivated also to register in the Member State of last employment for that purpose.

61. In the absence of a residence requirement, I would not therefore consider a simple requirement to register in the Member State of last employment in addition to registration in the State of residence to be an additional burden on a frontier worker such as to constitute an obstacle to freedom of movement under Article 45 TFEU in respect of payment of the recruitment subsidy.

62. In the light of that conclusion, there is no need to consider the question of justification. However, in order to furnish the national court with all the necessary elements I shall briefly address the submissions which have been made on this point.

37 — *van Gestel*, cited in footnote 11 above, paragraph 23 and the case-law cited there.

63. Caves Krier indicates in its written observations that the aim of the recruitment subsidy is to encourage employers to take on long-term unemployed older workers and to improve their prospects of re-entering the workforce.[38] However, there is no information pertaining to the aim of a registration condition in the national measure at issue.

64. Austria, the Czech Republic, Luxembourg and Poland submit that imposing a registration condition falls within the Member States' margin of discretion to act in relation to employment policy, in so far as it ensures that the beneficiary of assistance is linked to the job market of the State in question by requiring a minimum period of registration.

65. The Court has held that the Member States are required to choose measures likely to attain the objectives pursued in the field of employment. It has recognised that they have a broad margin of discretion in exercising that power. In addition, the encouragement of recruitment constitutes a legitimate aim of social policy.[39]

66. In general terms, it is reasonable to consider that registration with ADEM is required in order to ensure that the latter has the details necessary to match job seekers with job vacancies. There is no information as to why a person is required to have their details on the register for a minimum period of one month.

67. In relation to granting the recruitment subsidy, I also note that the registration condition does not apply in respect of all unemployed workers. Thus, where a worker is made redundant under a redundancy plan there is no requirement to register with ADEM.[40]

68. Thus, it is not clear from the measure at issue what the precise aim might be, nor why it is framed as it is. In consequence, it is impossible to take the analysis further as regards proportionality.

Recognition of registration in another Member State

69. The Commission contends that under EU law facts or events which take place in another Member State should be treated as if they had occurred in the territory of the Member State where the legislation applies (describing this as an emanation or extension of the principle of equal treatment).[41] The Commission submits that it follows from that case-law that Luxembourg should take account of the fact that Ms Krier was registered as unemployed in Germany; and that that should be sufficient to fulfil the registration requirement for the purposes of eligibility for the recruitment subsidy.

70. I am not inclined to follow the Commission's approach.

71. The conditions and the objectives of registration are governed by each Member State and they are not necessarily the same. In the absence of information indicating whether other Member States provide an employment placement service sufficiently similar to that of ADEM and any system of mutual recognition of registration requirements for unemployment benefits between the Member

38 — Caves Krier refers in that respect to document parlementaire n° 3798, p. 3, session 1992-1993.

39 — *Innovative Technology Center*, cited in footnote 17 above, paragraph 39 and case-law cited.

40 — See point 10 above.

41 — The Commission relies upon Case 15/69 *Ugliola* [1969] ECR 363, Case C-349/87 *Paraschi* [1991] ECR I-4501 and Case C-443/93 *Ioannis Vougioukas* [1995] ECR I-4033.

States,[42] I am not convinced that, simply by registering with the national authorities in one Member State, an unemployed person should be deemed to fulfil the conditions for deriving such benefits in another Member State, and hence trigger an entitlement for their new employer in that State to obtain a recruitment subsidy.

Conclusion

72. Accordingly, I am of the opinion that the Court should answer the question referred by the Cour administrative as follows:

Article 45 TFEU precludes national measures such as the first subparagraph of Article L.541-1 of the Code du travail, in so far as unemployed workers must satisfy a residence requirement in order to register with the competent national authorities and the grant of a recruitment subsidy to an employer who recruits a category of unemployed workers is conditional on such registration.

42 — There are no provisions concerning mutual recognition of registration conditions in Regulation No 1408/71. I note that Regulation No 883/2004 introduces provision for the exchange of information between the Member States' competent authorities, but does not change the position in respect of mutual recognition of registration requirements.