Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

26 February 2015 *

(Reference for a preliminary ruling — Social security — Regulation (EEC) No 1408/71 — Article 4 — Substantive scope — Levies on income from assets — General social contribution — Social debt repayment contribution — Social levy — Additional contribution to the social levy — Participation in the financing of compulsory social security schemes — Direct and sufficiently relevant link with some branches of social security)

In Case C-623/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (France), made by decision of 17 July 2013, received at the Court on 28 November 2013, in the proceedings

Ministre de l'Économie et des Finances

v

Gérard de Ruyter,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, S. Rodin, A. Borg Barthet, E. Levits and F. Biltgen (Rapporteur), Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Mr de Ruyter, by J. Molinié, avocat,

— the French Government, by D. Colas and R. Coesme, acting as Agents,

— the European Commission, by D. Martin and W. Roels, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 October 2014,

gives the following

* Language of the case: French.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4 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 (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1) and as amended by Council Regulation (EC) No 1606/98 of 29 June 1998 (OJ 1998 L 209, p. 1) ('Regulation No 1408/71').

2 The request has been made in proceedings between the ministre de l'Économie et des Finances (Minister for Economic Affairs and Finance) and Mr de Ruyter concerning the payment of several social contributions for the years 1997 to 2004 relating to life annuities purchased in the Netherlands.

Legal context

EU law

3 Article 4 of Regulation No 1408/71, entitled 'Substantive scope', is worded as follows:

'1. This Regulation shall apply to all legislation concerning the following branches of social security:

(a) sickness and maternity benefits;

(b) invalidity benefits, including those intended for the maintenance or improvement of earning capacity;

(c) old-age benefits;

(d) survivors' benefits;

(e) benefits in respect of accidents at work and occupational diseases;

(f) death grants;

(g) unemployment benefits;

(h) family benefits.

2. This Regulation shall apply to all general and special social security schemes, whether contributory or non-contributory, and to schemes concerning the liability of an employer or ship owner in respect of the benefits referred to in paragraph 1.'

4 Under Article 13 of Regulation No 1408/71:

'1. Subject to Articles 14c and 14f, 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;

(b) a person who is self-employed in the territory of one Member State shall be subjected to the legislation of that State even if he resides in the territory of another Member State;

…'

French law

5 Pursuant to Article L. 136-6 of the Social Security Code (code de la sécurité sociale), in the version applicable to the facts in the main proceedings, natural persons who are resident for tax purposes in France, within the meaning Article 4 B of the General Tax Code (code général des impôts), are subject to a contribution in respect of income from assets that is based on the net amount adopted for the assessment of income tax on, inter alia, 'revenus fonciers' (real estate income), 'rentes viagères constituées à titre onéreux' (purchased life annuities) and 'revenus de capitaux mobiliers' (investment income).

6 In accordance with Article 1600-0 C of the General Tax Code, which is one of the provisions of that code relating to the 'contribution sociale généralisée perçue au profit de la Caisse nationale des allocations familiales, du fonds de solidarité vieillesse et des régimes obligatoires d'assurance maladie' (General social contribution levied for the benefit of the National Family Allowances Fund, the Old-Age Solidarity Fund and the compulsory sickness insurance schemes; 'the CSG'), in the version applicable to the facts in the main proceedings, natural persons who are resident for tax purposes in France, within the meaning Article 4 B, are, as stated in Article L. 136-6 of the Social Security Code, subject to a contribution in respect of income from assets that is based on the net amount adopted for the assessment of income tax on, inter alia, real estate income, purchased life annuities and investment income.

7 Pursuant to Articles 1600-0 G and 1600-0 H of the General Tax Code, in the versions applicable to the facts in the main proceedings, those persons are also subject to a 'contribution pour le remboursement de la dette sociale' (social debt repayment contribution; 'the CRDS'), based on the same income.

8 In accordance with Article 1600-0 F bis of the General Tax Code, in the version applicable to the facts in the main proceedings, those persons are also subject to a 'prélèvement social' (social levy) of 2% on that income and, from 1 July 2004, to an additional contribution of 0.3% pursuant to Article L. 14-10-4 of the Social Assistance and Family Rights Code (code de l'action sociale et des familles).

The dispute in the main proceedings and the question referred for a preliminary ruling

9 Mr de Ruyter, a Netherlands national resident in France, is employed by Vermeer Verenigde Bedrijven BV, a Netherlands company.

10 In respect of the years from 1997 to 2004, Mr de Ruyter declared in France his income from Netherlands sources. That income was made up of his salary, income from investment capital, industrial and commercial profits and income from purchased life annuities paid by two Netherlands insurance companies.

11 The French tax authorities took the view that Mr de Ruyter's income from purchased life annuities constituted income from assets and declared him subject, in relation to those annuities, to the CSG, the CRDS, the social levy of 2% and the additional contribution of 0.3% to that levy.

12 Mr de Ruyter lodged complaints with those authorities challenging the merits of those levies, submitting that the obligation imposed on him to contribute, on the basis of the same income, to two separate social security schemes was contrary to the principle, pursuant to Article 13 of Regulation No 1408/71, that the legislation of a single Member State is to apply in matters of social security, since that income had already been subject to similar levies in the Netherlands. Following the dismissal both of those complaints and of the subsequent actions brought before the administrative courts of Marseilles and Nîmes, Mr de Ruyter appealed against the judgments delivered by those courts to the cour administrative d'appel de Marseille (Administrative Court of Appeal of Marseilles).

13 By judgments of 15 October 2009 and 1 July 2010, the cour administrative d'appel de Marseille released Mr de Ruyter from the contributions in respect of the life annuities which he had received between 1997 and 2000 and between 2001 and 2004 respectively, holding that the levying of the contested taxes on the life annuities disregarded the principle of free movement of workers established by Article 39 EC.

14 The ministre du Budget, des Comptes publics, de la Fonction publique et de la Réforme de l'État (Minister for the Budget, Public Accounts, the Civil Service and State Reform) appealed against those judgments on a point of law to the Conseil d'État (Council of State).

15 By judgment of 17 July 2013, the Conseil d'État set aside the judgment of the cour administrative d'appel de Marseille of 15 October 2009 in part and set aside that court's judgment of 1 July 2010 in its entirety. It held that the mere fact that the life annuities at issue had been subject to the same type of taxation in the Netherlands as they were in France was not enough to find an infringement of the freedom of movement for workers, since the EC Treaty which was then applicable did not lay down any general criteria for the attribution of areas of competence between the Member States in relation to double taxation within the European Union.

16 Since the Conseil d'État decided to rule on the merits of the two cases before it and Mr de Ruyter claimed that the levies at issue in the main proceedings were contrary to Article 13 of Regulation No 1408/71, it held that — in order to assess the scope of the principle, laid down by that article, that the legislation of a single Member State is to apply — it was necessary to ascertain whether those levies have a direct and relevant link with some of the branches of social security listed in Article 4 of Regulation No 1408/71 and thus fall within the scope of that regulation.

17 In that regard, the Conseil d'État noted, first, that those levies contribute to the financing of compulsory French social security schemes.

18 Secondly, and unlike the situations giving rise to the judgments in *Commission* v *France* (C-34/98, EU:C:2000:84) and *Commission* v *France* (C-169/98, EU:C:2000:85), the Conseil d'État observed that the levies at issue in the main proceedings are not imposed on employment income and substitute income, thus operating in part as a substitute for social security contributions, but are imposed only on income from the assets of the taxpayer concerned, irrespective of pursuit of a professional activity by that person.

19 The Conseil d'État also observed that those levies do not have any link at all with the acquisition of a right to a benefit or an advantage provided by a social security scheme and are, for that reason, regarded as having the nature of taxation and not that of social security contributions, within the meaning of the national constitutional and legislative provisions.

20 It was on that basis that the Conseil d'État decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Do the tax levies on income from assets, such as the social contribution on income from assets, the social debt repayment contribution based on that same income, the social levy of 2% and the additional contribution to that levy, have, by virtue of the mere fact that they contribute to the financing of compulsory French social security schemes, a direct and relevant link with some of the branches of social security listed in Article 4 of Regulation [No 1408/71], and do they thus fall within the scope of that regulation?'

Consideration of the question referred

21 By its question, the referring court asks, in essence, whether levies on income from assets, such as those at issue in the main proceedings, which contribute to the financing of compulsory social security schemes have a direct and relevant link with some of the branches of social security listed in Article 4 of Regulation No 1408/71 and thus fall within the scope of that regulation, even though those levies are imposed on the income from assets of taxable persons, irrespective of the pursuit by them of a professional activity.

22 In order to answer this question, it must be recalled that Article 4 of Regulation No 1408/71 determines the matters covered by the regulation in terms which make it clear that social security schemes are subject in their entirety to the application of the rules of EU law (judgments in *Jansen*, 104/76, EU:C:1977:72, paragraph 7, and *Rheinhold & Mahla*, C-327/92, EU:C:1995:144, paragraph 15).

23 The Court has stated that the decisive factor for the purposes of the application of Regulation No 1408/71 is that there must be a direct and sufficiently relevant link between the provision in question and the legislation governing the branches of social security listed in Article 4 of Regulation No 1408/71 (judgments in *Rheinhold & Mahla*, EU:C:1995:144, paragraph 23; *Commission* v *France*, EU:C:2000:84, paragraph 35; and *Commission* v *France*, EU:C:2000:85, paragraph 33).

24 The fact that a levy is categorised as a tax under national legislation does not mean that, in respect of Regulation No 1408/71, that same levy cannot be regarded as falling within the scope of that regulation (judgments in *Commission* v *France*, EU:C:2000:84, paragraph 34, and *Commission* v *France*, EU:C:2000:85, paragraph 32).

25 Nor can that conclusion be undermined by the fact that the levy at issue is, in part, designed to discharge a debt of the social security scheme caused by the financing of benefits paid out in the past (judgment in *Commission* v *France*, EU:C:2000:84, paragraph 39) or, as also noted by the Advocate General in point 31 of her Opinion, the fact that that levy is not intended to replace previously existing social security contributions.

26 Similarly, whether benefits are obtained or not in return is irrelevant for the purposes of the application of Regulation No 1408/71 as the decisive criterion is that of the specific allocation of a contribution to the funding of the social security scheme of a Member State (see, to that effect, judgments in *Commission* v *France*, EU:C:2000:84, paragraphs 39 and 40, and *Commission* v *France*, EU:C:2000:85, paragraphs 37 and 38).

27 Accordingly, in cases which concerned tax levies imposed by the French tax authorities on employment income and substitute income received by employed and self-employed persons residing in France who were subject to the tax regime of the French Republic, but who worked in another Member State, the Court found that those levies were allocated specifically and directly to financing social security in France and concluded from this that they had a direct and sufficiently relevant link

with the legislation governing the branches of social security listed in Article 4 of Regulation No 1408/71 (judgments in *Commission* v *France*, EU:C:2000:84, paragraphs 36 and 37, and *Commission* v *France*, EU:C:2000:85, paragraphs 34 and 35).

28 The same conclusion must follow with regard to the levies at issue in the main proceedings, which are not imposed on the employment income and substitute income of workers, but which are imposed on income from assets, since it is not in dispute that the proceeds of those levies are allocated specifically and directly to the financing of certain branches of social security in France or to the discharge of their debts.

29 Those levies therefore have a direct and sufficiently relevant link with the legislation governing the branches of social security listed in Article 4 of Regulation No 1408/71, irrespective of the absence of a link between the income from assets of taxable persons and the pursuit of a professional activity by them.

30 In that regard, as the Advocate General observed in point 41 of her Opinion, the application of the provisions of Regulation No 1408/71 is not conditional on the pursuit of a professional activity.

31 According to settled case-law, the existence of an employment relationship is irrelevant for the purposes of the application of Regulation No 1408/71, as the determining factor in this regard is the fact that a person is insured, compulsorily or on an optional basis, for one or more of the contingencies covered by a general or special social security scheme mentioned in Article 1(a) of that regulation (see, to that effect, judgments in *Martínez Sala*, C-85/96, EU:C:1998:217, paragraph 36, and *Borger*, C-516/09, EU:C:2011:136, paragraphs 26 and 28).

32 Furthermore, the concept of 'legislation' within the meaning of Article 1(j) of Regulation No 1408/71 is broad, including all the types of legislative, regulatory and administrative measures adopted by the Member States, and must be taken to cover all the national measures applicable in the matter (judgment in *Bozzone*, 87/76, EU:C:1977:60, paragraph 10).

33 That interpretation is also borne out by the objective pursued by Regulation No 1408/71 and by the principles on which that regulation is based.

34 In order to ensure free movement of employed and self-employed persons within the European Union, while upholding the principle of equal treatment of those persons under the various measures of national legislation, Title II of Regulation No 1408/71 has established a system of coordination concerning, inter alia, the determination of the legislation applicable to employed and self-employed persons who make use, under various circumstances, of their right to freedom of movement (see, to that effect, judgments in *Derouin*, C-103/06, EU:C:2008:185, paragraph 20, and *Tomaszewska*, C-440/09, EU:C:2011:114, paragraphs 25 and 28).

35 The completeness of that system of conflict rules has the effect of divesting the legislature of each Member State of the power to determine at its discretion the ambit and the conditions for the application of its national legislation so far as the persons who are subject thereto and the territory within which the provisions of national law take effect are concerned (judgments in *Luijten*, 60/85, EU:C:1986:307, paragraph 14, and *Somova*, C-103/13, EU:C:2014:2334, paragraph 54).

36 In that regard, Article 13(1) of Regulation No 1408/71 provides that the persons to whom that regulation applies are to be subject to the legislation of a single Member State only, which therefore excludes — subject to the cases provided for in Articles 14c and 14f — any possibility of the overlapping of the national legislation of several Member States in respect of one and the same period (see, to that effect, judgment in *Perenboom*, 102/76, EU:C:1977:71, paragraph 11).

37 That principle that the legislation of a single Member State applies in matters of social security is aimed at avoiding the complications which may ensue from the simultaneous application of a number of national legislative systems and at eliminating the unequal treatment which, for persons moving within the European Union, would be the consequence of a partial or total overlapping of the applicable legislation (see, to that effect, judgments in *Commission* v *France*, EU:C:2000:84, paragraph 46; *Commission* v *France*, EU:C:2000:85, paragraph 43; and *Allard*, C-249/04, EU:C:2005:329, paragraph 28).

38 It follows from the foregoing that the application of the provisions of Regulation No 1408/71 cannot be limited to the income that those persons derive from their employment relationships, as otherwise disparities would be created in the application of Article 13 of that regulation depending on the source of their income.

39 To require those who, among the residents of a Member State, are insured under the social security scheme of another Member State to finance, in addition, even if only partially, the social security scheme of the Member State of residence would give rise to unequal treatment under Article 13 of Regulation No 1408/71, since all other residents of the latter Member State are required to contribute only to its social security scheme (see, to that effect, judgments in *Commission* v *France*, EU:C:2000:84, paragraphs 45 to 48, and *Commission* v *France*, EU:C:2000:85, paragraphs 42 to 45).

40 In the present case, given that Mr de Ruyter, as a migrant worker, is subject to the social security scheme of the Member State of employment, namely the Netherlands, and that he falls within neither of the exceptions provided for in Articles 14c and 14f of Regulation No 1408/71 authorising the overlapping of the national legislation of several Member States regarding social security, he cannot be made subject by the Member State of residence, in respect of both income from an employment relationship and that from his assets, to legal provisions imposing levies which have a direct and sufficiently relevant link with the legislation governing the branches of social security listed in Article 4 of Regulation No 1408/71.

41 Furthermore, as the Advocate General observed in point 57 of her Opinion, due to the principle laid down by Article 13(1) of Regulation No 1408/71 that the legislation of a single Member State applies, those findings cannot be undermined by the fact that Mr de Ruyter's income from assets may not yet have been subject to a levy in the form of social security contributions in the Member State of employment.

42 In the light of all the foregoing considerations, the answer to the question referred is that Regulation No 1408/71 must be interpreted as meaning that levies on income from assets, such as those at issue in the main proceedings, have, when they contribute to the financing of compulsory social security schemes, a direct and relevant link with some of the branches of social security listed in Article 4 of that regulation and thus fall within the scope of the regulation, even though those levies are imposed on the income from assets of taxable persons, irrespective of the pursuit by them of any professional activity.

Costs

43 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

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 (EC) No 118/97 of 2 December 1996 and as amended by Council Regulation (EC) No 1606/98 of 29 June 1998, must be interpreted as meaning that levies on income from assets, such as those at issue in the main proceedings, have, when they contribute to the financing of compulsory social security schemes, a direct and relevant link with some of the branches of social security listed in Article 4 of that regulation and thus fall within the scope of the regulation, even though those levies are imposed on the income from assets of taxable persons, irrespective of the pursuit by them of any professional activity.

[Signatures]