OPINION OF ADVOCATE GENERAL JACOBS
delivered on 15 February 1996 *

1. The issue which has led the Tribunal de Première Instance (Court of First Instance), Brussels, to seek a preliminary ruling from the Court in this case is whether the European Community is liable to pay additional insurance premiums which Belgian insurers are required by law to charge on motor insurance services in order to contribute to the funding of the following Belgian institutions:

(i) L'Institut National de Maladie-Invalidité ('INAMI') (the National Sickness and Invalidity Insurance Institution);

(ii) Le Fonds National de Reclassement des Handicapés ('FNRSH') (the National Rehabilitation Fund for the Handicapped); and

(iii) La Croix-Rouge de Belgique ('CRB') (the Belgian Red Cross).

* Original language: English.

The background to the dispute and the national court's questions

2. Under the Belgian provisions applicable at the material time insurers and insured persons were jointly liable for the payment of additional insurance premiums which were used to fund the INAMI, the FNRSH and the CRB. The relevant provisions, as set out in the order for reference, were as follows:

(i) Article 24 of the Belgian Law of 16 April 1963 and the Royal Decrees of 5 July 1963, 23 October 1978 and 28 June 1984 provided that the FNRSH was to be funded through additional premiums for various categories of insurance, including a premium of 7.5% for motor insurance.

(ii) Article 121 of the Law of 9 August 1963 on sickness and invalidity insurance, as amended by Article 57 of the Law of 20 December 1974 relating to the 1974/75 budgetary proposals, provided that sickness and invalidity benefits were to be funded in part through the

payment of an extra premium of 10% of the cost of motor vehicle third party liability insurance, reduced to 5% for undertakings engaged in the commercial transport of goods or persons.

(iii) The Law of 7 August 1974 and the Royal Decree of 16 December 1974 implementing that Law provided that the CRB was to be funded by the payment of an extra premium of 0.25% of the cost of motor vehicle third party liability insurance.

3. According to the order for reference the FNRSH was dissolved by Royal Decree of 19 July 1991 but continued to operate for the purposes of its liquidation by virtue of Article 2 of that decree. At the hearing counsel for the INAMI stated that the FNRSH had in the mean time been liquidated and its functions assumed by the INAMI.

4. It appears that the additional insurance premiums are used as a source of general funding for the three institutions. The INAMI is a social security institution responsible for providing *inter alia* sickness and invalidity benefits. [1] Prior to its liquidation the FNRSH had a number of functions which included the provision of advisory, administrative and financial assistance aimed at achieving the rehabilitation of disabled people. [2] The functions of the CRB include the provision of transport by ambulance for injured persons from the scene of accidents to hospital.

5. It appears from the order for reference that the European Community concluded a number of insurance contracts with the plaintiff insurance company, AGF Belgium, including contracts providing third party liability insurance for vehicles used by the various institutions. The Community refused to pay the additional insurance premiums on the ground that they constituted indirect taxes from which the Community was exempt under Article 3 of the Protocol on Privileges and Immunities of the European Communities.

6. Notwithstanding the refusal by the Community to pay the additional premiums, AGF Belgium paid amounts equal to those premiums to the INAMI, FNRSH and CRB. It then instituted proceedings against the European Community, the INAMI, the FNRSH, the CRB and the Belgian State before the Tribunal de Première Instance, Brussels, in order to recover the sums that it had paid. It seeks to recover those sums either from the European Community on the basis that the latter is not entitled to rely

1 — See Annex 2 of the consolidated version of Council Regulation (EEC) No 574/72, OJ 1992 C 325, p. 96. See also Pieters, *Introduction to the Social Security Law of Member States of the European Community*, Second Edition, Bruylant, 1993, p. 21.

2 — See Article 3 of the Law of 16 April 1963.

on Article 3 of the Protocol and must therefore pay the premiums or from the INAMI, FNRSH and CRB on the basis that the premiums were not due and must be reimbursed by those institutions.

7. Before the national court the Belgian State and the three institutions put forward a number of arguments to support their view that the Community could not rely on Article 3 of the Protocol. Those arguments may be summarized as follows. First, as a matter of national law the premiums fall to be classified as social contributions rather than taxes and as such are not covered by the exemption in Article 3. Secondly, the premiums constitute 'charges for public utility services' excluded from exemption by the third paragraph of Article 3. Finally, the second paragraph of Article 3 provides for the refund to the Communities only of 'indirect taxes or sales taxes included in the price of movable or immovable property'; it does not extend to premiums levied on services provided under a contract of insurance. Those arguments prompted the national court to refer the following questions to the Court 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?

The relevant Community provisions

8. Article 3 of the Protocol on the Privileges and Immunities of the European Communities is to be found in Chapter I of the Protocol, entitled 'Property, Funds, Assets and Operations of the European Communities'. It provides 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.'

9. Also of relevance are Articles 13 and 15 of the Protocol, which are to be found in Chapter V, entitled 'Officials and Other Servants of the European Communities'. Article 13 provides:

'Officials and other servants of the Communities shall be liable to a tax for the benefit of the Communities on salaries, wages and emoluments paid to them by the Communities ... .

They shall be exempt from national taxes on salaries, wages and emoluments paid by the Communities.'

10. Article 15 of the Protocol states:

'The Council shall, acting unanimously on a proposal from the Commission, lay down the scheme of social security benefits for officials and other servants of the Communities.'

11. Pursuant to that article the Council established a comprehensive social security system for officials and other servants, including provision for old-age and survivors' pensions and also invalidity, sickness, and accident benefits: see *inter alia* Articles 72 to 84 of the Staff Regulations of Officials

of the European Communities and Articles 28 to 44 of the Conditions of Employment of Other Servants of the European Communities.

Question 1

12. By its first question the national court asks whether the charges in question are covered by the exemption from taxes in Article 3 of the Protocol even though they may be regarded under national law as social contributions.

13. The national court's question is prompted by the argument put forward by the Belgian institutions that, as social contributions, the premiums in question are not covered by the exemption from taxes in Article 3. However, as I shall explain below, that argument, if successful, would not avail the Belgian institutions; the Communities are in principle no more obliged to contribute to the social spending of a State than they are to contribute to its general public expenditure.

14. The distinction between a tax and a social contribution has not yet been considered by the Court in the context of Article 3 of the Protocol. However, in *Klomp* v *Inspektie der Belastingen* [3] the Court was asked to consider whether the phrase 'all taxes on salaries and emoluments paid by the Community' in Article 11(b) of the Protocol on the Privileges and Immunities of the ECSC, a forerunner of Article 13 of the single Protocol, covered contributions payable under the Netherlands General Law on Old Age, which established a pension scheme that was applicable in principle to all residents of the Netherlands. The scheme was financed by contributions that were assessed on the income of members of the scheme and were collected in the same manner as taxes.

15. The Court observed that it was necessary to distinguish between a tax intended to provide for the general expenses of public authorities and a contribution intended to finance a social security scheme. A contribution intended to finance a social security scheme did not constitute a tax within the meaning of Article 11(b) even if the contribution was levied in a manner resembling the levying of taxes. However, the Court expressly left open the question, not put by the national court, whether Community officials might be exempt from such a contribution by virtue of Community or national provisions intended to avoid compulsory affiliation of officials to a national social security scheme where they were already subject to a corresponding Community scheme.

3 — Case 23/68 [1969] ECR 43.

16. In his Opinion in that case Advocate General Gand pointed out that 'Article 11 is a rule of Community law the content of which must be determined by reference to such law and not by reference to Netherlands law'. [4] Similarly in *Humblet* v *Belgium* [5] the Court observed in relation to the same provision:

'From the point of view of the law applicable, the general problem must be resolved according to the law of the Community, in particular by interpreting Article 11 of the Protocol, and not according to Belgian law.

Consequently, neither the Belgian legislation and case law nor the practice followed in analogous cases by the Belgian authorities can be relevant to this case since they resolve the problem in the light of national law.'

17. It is clear that the same applies to Article 3 of the single Protocol. It is immaterial how a charge is classified under national law. The term 'taxes' in Article 3 must be interpreted by reference to its normal meaning and in the light of the purpose of the provision. Such an approach is the only means of ensuring that the provision is effectively and uniformly applied.

18. It is true that in *Kristoffersen* [6] the Court held that the term 'income tax' in the first paragraph of Article 14 of the Protocol was to be construed by reference to national law. However, that provision merely determines the Member State in which a Community official is deemed to be resident for certain tax purposes. It does not affect the scope of the exemption from certain national taxes applicable to Community officials under Article 13 of the Protocol. In examining the latter question the Court had regard not to the classification of the tax under national law but to its characteristics. [7]

19. The term 'tax' is usually understood to mean a compulsory payment to government, whether central, regional or local, destined to finance public expenditure. Taxes are normally general in scope, being applicable to one or more categories of persons, goods, services, transactions or activities. A further characteristic of taxes is that there is normally no relationship between the benefits received by individual taxpayers and the payments made.

4 — P. 56.

5 — Case 6/60 [1960] ECR 559, p. 574.

6 — Case C-263/91 *Kristoffersen* v *Skatteministeriet* [1993] ECR I-2755.

7 — See paragraph 14 et seq.

20. As the judgment in *Klomp* indicates, social contributions, although analogous to taxes, are generally regarded as a distinct category of levy, their purpose being to fund social benefits and health care provided by the State or by bodies on its behalf. In its clearest form a social contribution is a payment by insured persons and employers to a social security fund set up to provide social or health benefits for all the residents of a country or for particular categories of residents. The charge in issue in *Klomp* is an example of a contribution to such a scheme.

21. However, expenditure on social benefits and health care is not always financed wholly by contributions paid by insured persons and employers. It is common for such expenditure to be funded partly from general taxation. In the United Kingdom, for example, a distinction is drawn between contributory benefits financed from contributions paid by insured persons and employers and non-contributory benefits financed out of general taxation; health care is provided by the National Health Service, which is financed mainly from general taxation. [8] In Denmark social assistance and a number of social security benefits are financed wholly out of general taxation. [9] Some Member States adopt an intermediate solution of financing social and health care spending partly by means of fiscal or parafiscal charges on certain persons or categories of goods or services. In France, for example, funding from contributions paid by insured persons and their employers is supplemented by taxes on alcohol, pharmaceutical advertising and car ownership; in addition family allowances are financed by a general charge known as the contribution sociale généralisée, the introduction of which was described by one commentator as the first step towards the financing of French social security schemes by taxation. [10] In Belgium employee insurance schemes are also financed by such charges, including, in addition to the premiums in question here, charges on pharmaceutical companies and products and a proportion of the indirect tobacco taxes collected by the tax authorities. [11]

22. Thus the fact that the revenue from the premiums in question in the present case is allocated to bodies providing social or health care services such as the FNRSH or CRB, or even to a body such as the INAMI responsible for paying sickness and invalidity benefits, is not a decisive factor for the purpose of classifying the charges. That factor is in my view outweighed by other features of the charges which suggest that they may properly be regarded as taxes. The charges are levied on insurance services in a similar manner to an indirect tax on insurance; they are

8 — Pieters, op. cit., p. 131.
9 — Pieters, op. cit., p. 53.
10 — Pieters, op. cit., pp. 94 and 95.
11 — Pieters, op. cit., p. 34.

general in scope, being applicable to all persons taking out motor insurance policies; and the services or benefits received by individual insured persons are not in proportion, or in any way related, to the amount of the levies.

23. Moreover, a broad interpretation of the exemption is warranted by the aim of Article 3, which is to prevent a Member State, in particular a host State, from gaining an unjustified advantage by diverting to the national treasury funds contributed to the budget of the Communities. That aim would be frustrated if the term 'taxes' were construed strictly and did not cover charges of a parafiscal nature that do not constitute the consideration for specific services.

24. As the Commission observes, in the context of Article 95 the Court has considered a broad interpretation of the term 'taxation' to be justified by the wording and purpose of the provision. For example, in *Iannelli* v *Meroni* [12] the Court held:

'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 field of application of Article 95 of the Treaty'.

25. In any event, as I have already suggested, even if in this case the view were taken that the premium charged in order to fund the INAMI should be classified as a contribution to a social security scheme rather than a tax within the meaning of Article 3 of the Protocol, the Communities would still not be obliged to pay it. It is clear from Article 15 of the Protocol, in conjunction with the regulations laid down by the Council pursuant thereto, that the intention of the authors of the Protocol was that the Communities should make their own social security arrangements for their officials and other servants rather than contributing to national social security schemes. As already noted, the Staff Regulations of Officials and Conditions of Employment of Other Servants provide comprehensive social security cover for the staff covered by those rules, including provision for sickness, accident and invalidity benefits: see Articles 72 and 73 of the Staff Regulations of Officials of the European Communities and Articles 28 and 31 et seq. of the Conditions of Employment of Other Servants. By virtue of those provisions those benefits are not of a complementary nature but are paid without regard to eligibility for benefits under other schemes.

26. Only in the case of auxiliary and local staff, who are excluded from the Community schemes, do the Conditions of Employment

12 — Case 74/76 [1977] ECR 557, paragraph 19 of the judgment.

of Other Servants require the Community institutions to contribute to national social security schemes: see Articles 70 and 80 of the Conditions.

27. As I have explained, however, the charges in question in the present case may properly be regarded as taxes from which the Community is exempt under Article 3 of the Protocol. Although it seems to me that the charges should be regarded as indirect taxes, the distinction between direct taxes covered by the first paragraph of Article 3 and indirect taxes covered by the second paragraph is not an issue in this case.

29. The Court has not previously been asked to consider the distinction between a tax and a charge for a service in the context of Article 3 of the single Protocol, but in *Van Leeuwen* v *Rotterdam* [13] had occasion to do so in relation to Article 12 of the Protocol on the Privileges and Immunities of the EEC, a forerunner of the exemption for officials in Article 13 of the single Protocol. There the question arose whether a school levy imposed under Netherlands law on an official whose child attended a school in Rotterdam was covered by the exemption from national taxes provided for in the second paragraph of Article 12. The Court held that a charge or due representing the consideration for a given service rendered by the public authorities such as the school levy in question, which was moreover only payable in respect of non-compulsory education, was not a tax within the meaning of the Protocol.

Question 2

28. By its second question the national court asks in effect whether insurance premiums such as those in issue in the main proceedings are to be regarded as charges for public utility services excluded from exemption by the third paragraph of Article 3. The national court notes that there is a relationship, albeit indirect and potential, between the premiums and the services provided by the three institutions. Any motorist involved in a traffic accident and suffering personal injuries is likely to become a recipient of the services offered by the institutions.

30. A feature of the levy in that case was that it was directly linked to the service received by the official. As Advocate General Roemer observed in his Opinion in the case, the rationale for the exemption from national taxes in Article 12 did not apply to charges 'the reason for which is the rendering of a particular service by the administration and the payment of which can be avoided by foregoing the service'. [14]

13 — Case 32/67 [1968] ECR 43.
14 — P. 52.

31. Advocate General Roemer's remarks highlight what in my view is the crucial distinction between a tax and a charge for a public utility service. A tax, as already noted, is a payment made to government in order to finance general public expenditure; the benefits received by individual taxpayers by reason of such expenditure are not in proportion to the payments which they make. A charge for a public utility service, on the other hand, is the price paid for a specific service. There is a direct link between the charge and the benefit received.

32. The rationale for the distinction made in Article 3 is plain. The making of a payment in return for a specific service provided by the public authorities of a Member State represents the legitimate use of Community funds. For all material purposes it is the same as a payment made to a private supplier. That is not so in the case of a tax, where the link between the payment and any benefits received is both indirect and remote.

33. The above view is moreover consistent with the Court's case-law in other areas, in particular its rulings on the interpretation of the Community VAT directives. For example in *Apple and Pear Development Council* v *Commissioners of Customs and Excise* [15] the taxable person, a body established by statutory instrument to promote sales and improve the quality of apples and pears grown in England and Wales, was authorized to finance its activities by imposing an annual charge on growers. The Court held that those activities did not constitute a 'supply of services ... effected for consideration' within the meaning of Article 2 of the Sixth VAT Directive [16] because there was no direct link between the amount of the charge and the benefits received by individual growers. In the words of Advocate General Slynn [17] the charge was more in the nature of an 'across-the-board tax than a true payment for services'.

34. The above view is also consistent with the interpretation given by the Secretariat of the United Nations Organization to Article 7(a) of the Convention on the Privileges and Immunities of the United Nations, [18] which likewise distinguishes between taxes and charges for public utility services. In its opinion of 20 June 1973 [19] the UN Secretariat stated that the term 'public utility services' applies only to particular supplies furnished or services rendered by a government or corporation under government regulation for which charges are made at a fixed rate according to the amount of supplies furnished or services rendered. In addition, the

15 — Case 102/86 [1988] ECR 1443.

16 — OJ 1977 L 145, p. 1.

17 — [1988] ECR 1443, p. 1461.

18 — *United Nations Treaty Series*, Vol. 1, p. 15.

19 — *Annuaire Juridique des Nations Unies*, 1973, pp. 145 to 150.

charges must be for services that can be specifically identified, described, itemized and calculated according to some predetermined unit. [20]

35. It is clear that the insurance premiums in question here cannot be regarded as charges for public utility services within the meaning of Article 3 of the Protocol. There is no direct relationship between the premiums and the benefits received by individual insured persons. In the case of the Communities it is in any event unlikely that the benefits received are more than minimal given that most Community staff are covered by the special social security schemes set up pursuant to Article 15 of the Protocol.

Question 3

36. By its third question the national court asks whether Article 3 of the Protocol is to be interpreted as applying to indirect taxes on services. As already noted, the question arises because Article 3 refers only to 'indirect taxes or sales taxes included in the price of movable or immovable property'.

37. The national court's question should in my view be given an affirmative reply. A distinction between taxes on goods and those on services within the context of Article 3 would be arbitrary and contrary to the intentions of the authors of the Protocol. The rationale for exempting the Communities from taxes, namely to prevent a Member State, in particular a host State, from gaining an unjustified advantage by diverting to the national treasury funds contributed to the budget of the Communities, applies equally to taxes on services.

38. The absence of an express reference to taxes on services in Article 3 can be explained by the greater importance attached historically to the taxation of goods. The general taxation of services is of relatively recent origin. Even under the Community VAT system it was not until the Sixth VAT Directive took effect on 1 January 1978 that all services were brought within the scope of the tax; under Article 6(2) of the Second VAT Directive [21] only the services listed in Annex B were compulsorily taxable.

20 — See in particular paragraphs 10 and 11 of the opinion.

21 — OJ, English Special Edition 1967, p. 16.

39. Moreover, it appears from the administrative circular annexed to the Belgian Government's reply to a written question put by the Court that the Belgian authorities treat VAT on services as falling within the scope of the exemption in Article 3 of the Protocol. It also appears from documents submitted by the Commission in response to the same question that other Member States also treat VAT on services as falling within the scope of the exemption.

Conclusion

40. Accordingly, in my opinion the questions referred to the Court by the Tribunal de Première Instance, Brussels, should be answered as follows:

(1) The second paragraph of Article 3 of the Protocol on the Privileges and Immunities of the European Communities applies to additional insurance premiums imposed by law on motor insurance services in order to fund bodies such as the INAMI, the FNRSH and the CRB, even where as a matter of national law such premiums are regarded as social contributions.

(2) Such premiums do not constitute charges for public utility services within the meaning of the third paragraph of Article 3 of the Protocol.

(3) The second paragraph of Article 3 of the Protocol applies to indirect taxes levied on the provision of services.