JUDGMENT OF THE COURT
16 November 1995 *

In Case C-244/94,

REFERENCE to the Court under Article 177 of the EEC Treaty by the French Conseil d'Etat for a preliminary ruling in the proceedings pending before that court between

Fédération Française des Sociétés d'Assurance,

Société Paternelle-Vie,

Union des Assurances de Paris-Vie,

Caisse d'Assurance et de Prévoyance Mutuelle des Agriculteurs

and

Ministère de l'Agriculture et de la Pêche

on the interpretation of Articles 85 et seq. of the EC Treaty,

* Language of the case: French.

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris and D. A. O. Edward (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida (Rapporteur), P. J. G. Kapteyn, C. Gulmann, J. L. Murray, P. Jann, H. Ragnemalm and L. Sevón, Judges,

Advocate General: G. Tesauro,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— the applicants in the main proceedings by Dominique Voillemot, of the Paris Bar,

— the French Government by Edwige Belliard, Deputy Director of the Legal Affairs Section at the Ministry of Foreign Affairs, and Claude Chavance, Attaché principal d'administration centrale in the same section, acting as Agents,

— the Commission of the European Communities by Richard Lyal, of the Legal Service, and Géraud de Bergues, a national official on secondment to the Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the applicants in the main proceedings, represented by Michel Guénaire and Marie-Pia Hutin, of the Paris Bar, of the French

Government, represented by Claude Chavance, and of the Commission, represented by Richard Lyal and Géraud de Bergues, at the hearing on 13 June 1995,

after hearing the Opinion of the Advocate General at the sitting on 13 July 1995,

gives the following

Judgment

1 By decision of 24 June 1994, received at the Court on 9 September 1994, the French Conseil d'Etat referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question concerning the interpretation of Article 85 et seq. of the EC Treaty.

2 The question has arisen in an action by the Fédération Française des Sociétés d'Assurance, the Société Paternelle-Vie, the Union des Assurances de Paris-Vie and the Caisse d'Assurance et de Prévoyance Mutuelle des Agriculteurs for the annulment of Decree No 90-1051 of 26 November 1990 concerning the optional supplementary old-age insurance scheme for self-employed farmers, established pursuant to Article 1122-7 of the Code Rural (JORF, 27 November 1990, p. 14581) on the ground of abuse of powers.

3 Decree No 90-1051 lays down the organization and detailed rules for operation of the supplementary old-age insurance scheme for self-employed farmers financed by voluntary contributions deductible from taxable earnings, which was created by Law No 88-1202 of 30 December 1988 on the adaptation of farming to its economic and social environment (JORF, 31 December 1988, p. 16741).

4 In accordance with the second paragraph of Article 1 of Decree No 90-1051, the new supplementary scheme is managed by the Caisse Nationale d'Assurance Vieillesse Mutuelle Agricole ('the CNAVMA') with the assistance of the agricultural social insurance funds for individual departments or for areas covering more than one department ('the local funds').

5 The applicants in the main proceedings have argued before the Conseil d'Etat that the grant of a monopoly of management of the scheme in question to the CNAVMA, assisted by the local funds, and the tax deductibility of contributions paid to the CNAVMA, placed the latter in a position to eliminate competing insurance companies from the market in life assurance and in capitalization and retirement savings schemes. They submit that Decree No 90-1051 is therefore contrary to Article 85 et seq. of the Treaty.

6 Since it had doubts as to the interpretation of Community law, the Conseil d'Etat decided to stay the proceedings and ask the Court whether

'a non-profit-making organization which manages an old-age insurance scheme intended to supplement a basic compulsory scheme, established by law as an optional scheme and operating according to the principle of capitalization in keeping with the rules laid down by the authorities in particular with regard to conditions for membership, contributions and benefits, is to be regarded as an undertaking for the purposes of Article 85 et seq. of the Treaty'.

7 In the submission of the French Government, the CNAVMA, which has been merged since 1 January 1994 with the other two central agricultural benevolent funds to form a single organization, the *Caisse Centrale de la Mutualité Sociale Agricole* (the 'CCMSA'), is not an undertaking within the meaning of Article 85 et

seq. of the Treaty. In support of its argument, it refers to the various characteristics of the supplementary retirement scheme for self-employed farmers, known as 'Coreva', and of the body managing it.

8 In the first place, it is argued that the Coreva scheme pursues a social purpose. It was created to protect against various risks a population whose income is lower and whose average age is higher than those of other socio-economic categories, and whose basic old-age insurance scheme is not sufficient. If the Coreva scheme operates in accordance with the capitalization method rather than on a redistributive basis, that is because management by the latter method is possible only in the case of compulsory schemes which implement the principle of solidarity between several individuals, which is not the case here.

9 Secondly, the rights and obligations between the managing organization and the persons insured are not governed by a contract under private law but flow from regulations adopted under public law which cannot be amended on the initiative of the parties concerned or to suit their interests. In that respect, the French Government points out that the Coreva scheme is based on the basic old-age insurance scheme, that the local funds cannot make any selection as between those persons who fall within the range of persons and occupations defined by Article 1122-7 of the Code Rural, since no questionnaire or medical file is required prior to registration, that contributions are proportionate to occupational income and cannot exceed three times the ceiling under the basic social security scheme, namely 4.5% (or 7%, the increased contribution which may be selected as an option for 5 years), and finally that benefits are granted in the form of life annuities and never as a capital sum. The only feature to differentiate the Coreva scheme from a compulsory statutory scheme operating on a redistributive basis is the way in which the acquisition price and the value of credit units in the supplementary retirement scheme are determined by the board of the CCMSA.

10 Thirdly, the Coreva scheme is based on the principle of solidarity. Thus, members unable to pay contributions because of illness can be exempted from payment by a

special committee; responsibility for the contributions is then assumed by a social action fund financed by a levy on contributions to the supplementary scheme at the rate of 0.5% of gross annual contributions. Moreover, any member may leave the scheme without penalty, accrued pension rights being preserved intact for the benefit of the person concerned. Finally, in the event of the premature death of a member, the accumulated credit units are not assigned to his successors, as in the case of a life assurance or retirement savings contract, but are placed at the disposal of the scheme and used to increase the value of pensions in the course of funding.

11 Fourthly, the managing organization is a non-profit-making body. It is administered by volunteers elected under the conditions laid down by Article 1011 of the Code Rural and its management is subject to the joint control of the Minister of Agriculture and the Minister of Finance. Moreover, the available resources held by the local funds may be used only for the financial investments authorized by the Decree of 27 February 1987 amending the Decree of 13 March 1973 concerning investments and loans by agricultural social funds (JORF, 16 April 1987, p. 4332). Management expenses are covered by a specific contribution within the limits laid down by a decree of the Minister of Agriculture.

12 In the light of the above, the French Government considers that the Coreva scheme is not competitive in nature and that the organization which manages it fulfils all the conditions which led the Court of Justice to hold in its judgment in Joined Cases C-159/91 and C-160/91 *Poucet and Pistre* [1993] ECR I-637 that organizations managing social security schemes of the kind at issue in those cases were not undertakings within the meaning of Articles 85 and 86 of the Treaty.

13 In the alternative, the French Government argues that the conferral of exclusive rights on the CCMSA is not contrary to Article 90 of the EC Treaty. The exercise

of such rights does not cause the managing organization to abuse its dominant position and is not likely to create a situation in which that body would be led to commit such abuses.

14 In the context of competition law, the Court has held that the concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed (see, in particular, the judgments in Case C-41/90 *Höfner and Elser* [1991] ECR I-1979, paragraph 21, and *Poucet and Pistre*, cited above, paragraph 17).

15 In *Poucet and Pistre*, the Court excluded from that concept bodies entrusted with the management of certain compulsory social security schemes based on the principle of solidarity. Under the sickness and maternity insurance scheme there in question, the benefits were identical for all recipients, but contributions were proportionate to income. Under the old-age insurance scheme, retirement pensions were financed by active workers. Further, the pension rights, laid down by legislation, were not proportionate to the contributions paid under the old-age insurance scheme. Finally, schemes which were in surplus helped finance those which had financial difficulties of a structural nature. Such solidarity necessarily required the various schemes to be managed by a single body and membership of those schemes to be compulsory.

16 It is in the light of those considerations that the Court must consider whether the concept of an undertaking, within the meaning of Article 85 et seq. of the Treaty, covers a body such as that at issue in this case.

17 The first point to note is that membership of the Coreva scheme is optional, that the scheme operates in accordance with the principle of capitalization, and that the

benefits to which it confers entitlement depend solely on the amount of contributions paid by the recipients and the financial results of the investments made by the managing organization. The CCMSA therefore carries on an economic activity in competition with life assurance companies. As the Commission has rightly observed, a farmer wishing to supplement his basic pension will opt, as between the CCMSA and an insurance company, for the solution which guarantees the better investment.

18 The elements of solidarity forming part of the scheme at issue here, and the other characteristics to which the French Government has referred, cannot alter that conclusion.

19 First, the principle of solidarity is reflected in this case by the fact that contributions are not linked to the risks incurred, by the placing of resources corresponding to the contributions paid at the disposal of the scheme in the event of the premature death of a member, by a mechanism for granting exemption from payment of contributions in the event of illness, and by the temporary suspension of payment of contributions for reasons connected with the economic situation of the holding. Such provisions already exist in certain group life assurance policies, or may be included therein. In any event, the principle of solidarity is extremely limited in scope, which follows from the optional nature of the scheme. In those circumstances, it cannot deprive the activity carried on by the body managing the scheme of its economic character.

20 Secondly, whilst the pursuit of a social purpose, the requirements of solidarity and the other rules mentioned by the French Government — in particular, the rights and obligations of the managing body and the persons insured, the rules of that body and the restrictions to which it is subject in making its investments — may make the service provided by the Coreva scheme less competitive than the comparable service provided by life assurance companies, such limitations do not pre-

vent the activity carried on by the CCMSA from being regarded as an economic activity. A separate question, still to be examined, would be whether those limitations could be relied upon, for example, in order to justify the exclusive right of that body to provide old-age insurance in respect of which contributions are deductible from taxable earnings.

21 Finally, the mere fact that the CCMSA is a non-profit-making body does not deprive the activity which it carries on of its economic character, since, having regard to the features referred to in paragraph 17, that activity may give rise to conduct which the competition rules are intended to penalize.

22 The answer to the national court's question must therefore be that a non-profit-making organization which manages an old-age insurance scheme intended to supplement a basic compulsory scheme, established by law as an optional scheme and operating according to the principle of capitalization in keeping with the rules laid down by the authorities in particular with regard to conditions for membership, contributions and benefits, is an undertaking within the meaning of Article 85 et seq. of the Treaty.

Costs

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

On those grounds,

THE COURT,

in answer to the question referred to it by the French Conseil d'Etat by decision of 24 June 1994, hereby rules:

A non-profit-making organization which manages an old-age insurance scheme intended to supplement a basic compulsory scheme, established by law as an optional scheme and operating according to the principle of capitalization in keeping with the rules laid down by the authorities in particular with regard to conditions for membership, contributions and benefits, is an undertaking within the meaning of Article 85 et seq. of the EC Treaty.

Rodríguez Iglesias Kakouris Edward

Mancini Moitinho de Almeida Kapteyn

Gulmann Murray Jann

Ragnemalm Sevón

Delivered in open court in Luxembourg on 16 November 1995.

R. Grass G. C. Rodríguez Iglesias

Registrar President