OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 15 June 1988 *

Mr President,
Members of the Court,

1. In the three references for a preliminary ruling now before the Court, the tribunal du travail, Brussels, and the Belgian Hof van Cassatie request the Court to interpret the provisions of the EEC Treaty relating to the free movement of persons and the freedom to provide services.

The parties in the relevant proceedings are, on the one hand, the Institut national d'assurances sociales pour travailleurs indépendants (National Social Insurance Institution for Self-employed Persons) (Inasti) and, on the other hand, Christopher Stanton, a British national employed by a British insurance company (Case 143/87); Heinrich Wolf, a German national employed as an engineer with Degussa in Frankfurt; and Wilfried Dorchain, a Belgian national employed in Germany by Ford-Werke AG (Joined Cases 154 and 155/87).

In addition to those principal occupations, each of these persons has for some time carried out duties as a director in a Belgian company, namely L'Étoile 1905, NV Microtherm Europe and PVBA Almare, respectively. Since, under Belgian law, a director of a commercial company is deemed to be a self-employed person, Inasti requires Messrs Stanton, Wolf and Dorchain to pay the relevant social security contributions. The three directors, on the other hand, argue that they are not obliged to pay anything, and put forward the following arguments: (a) they are not compulsorily affiliated, as employees, to the respective social security systems of the States in which they are employed; (b) under Belgian legislation, a self-employed person who already pays contributions as an employee to a national scheme is, on this account, exempt from payment of further contributions; (c) to plead, as Inasti does, that their contributions are paid into schemes of Member States other than Belgium is contrary to the principal of equal treatment and to the Community provisions relating to freedom of movement for workers.

In view of those arguments, the tribunal du travail, Brussels, (Case 143/87) and the Belgian Hof van Cassatie (Cases 154 and 155/87) referred to the Court, by judgments of 30 April and 4 May 1987, questions of a substantially similar nature. They may be summarized as follows: Must Article 52 *et seq.* of the EEC Treaty be interpreted as meaning that the legislation of a Member State is incompatible with those provisions where it provides that self-employed persons are exempt from the payment of social security contributions when they are already affiliated to a social security scheme in that State but there is no exemption for self-employed persons who are covered, in relation to their employment, by the social security scheme of another Member State?

During the proceedings before the Court written observations were submitted by

* Translated from the Italian.

Inasti, the Belgian Government and the Commission of the European Communities (Case 143/87 and Joined Cases 154 and 155/87); by Mr Stanton and L'Étoile 1905 (Case 143/87); and by Mr Wolf and NV Microtherm Europe (Joined Cases 154 and 155/87). Inasti, the Commission and Mr Wolf presented oral argument at the hearing.

2. Let me begin with a few words about the national legislation whose compatibility with Community law is at issue. Article 3 (1) of Royal Decree No 38 of 27 July 1967, which established the social security scheme for self-employed persons, provides that 'any natural person carrying on in Belgium an occupational activity in respect of which he is not bound by a contract of employment or fixed conditions of employment' must pay contributions to the social security scheme. Under Article 2 of the Royal Decree of 19 December 1967, which gave effect to this scheme, the holding of a remunerated directorship in a commercial company is deemed to be such an occupational activity.

Moreover, Article 12 (2) of Royal Decree No 38 provides that 'a person subject to the scheme who, ... habitually pursues by way of principal occupation another employment occupational activity is not liable to pay any contributions if his income as a self-employed person' does not reach a certain level. The concept of a habitual and principal occupation is further defined in Article 35 (1) of the Royal Decree of 19 December 1967. The definition is satisfied if: '(a) [the] employment of [the person concerned] as a manual worker, clerical worker, miner or sailor on a ship flying the Belgian flag meets the definition of a principal occupation within the meaning of the scheme applicable to those categories of workers; (b) the activity he pursues is covered by another pension scheme established by or under a law, by a provincial regulation or by the Belgian Railways ...'. Finally paragraph 3 of that provision states that 'employment by an international ... organization of which Belgium is a member shall be treated as employment as a manual worker or clerical worker ...'.

3. Stressing that Community coordinating rules were only introduced in this field by Regulation No 1390/81 of 12 May 1981 (Official Journal 1981, L 143, p. 1), Inasti observes that the legislation described above sought to ensure adequate social protection for any person carrying on an occupational activity in Belgian territory without giving any importance, even indirectly, to that person's nationality. Furthermore, employment pursued by way of principal occupation in another Member State is governed by the scheme specific to that State and cannot therefore have any effect on the application of Belgian social legislation. In the final analysis, in order to give entitlement to exemption from contributions the employment must be governed by a Belgian social security scheme or — and this is the only exception — it must be in the service of an international organization of which Belgium is a member.

This argument is not persuasive. I should observe first of all that the problem raised by the national courts concerns a situation in which the refusal to grant exemption is based not on the nationality of the employee who is also a director of a Belgian company, but on the fact that the social security scheme to which he pays contributions is not governed by Belgian legislation. It is not necessary to determine whether this state of affairs conceals indirect discrimination in order to recognize that it makes the self-employed person's right to benefit from the exemption depend on employment in Belgium. If that condition is not met, the worker is required to pay a

sum (contributions in respect of work as a self-employed person) whose collection is not justified by any social consideration once he is affiliated to a social security scheme, even if it is in a different State.

Consequently, the national legislation in question is capable of impeding the freedom of workers to establish themselves in another Member State and for that reason alone is incompatible with Community law. I should observe in this connection that Article 52 of the Treaty is a fundamental provision in the Community legal order and has been directly applicable in the Member States since the end of the transitional period. It seeks 'to ensure that all nationals of Member States who establish themselves in another Member State, even if that establishment is only secondary, for the purpose of pursuing activities there as self-employed persons receive the same treatment as nationals of that State' (judgment of 28 January 1986 in Case 270/83 *Commission* v *France* [1986] ECR 273, paragraphs 13 and 14).

The conclusion thus reached is not affected by the argument that the Royal Decrees of 27 July and 19 December 1967 were adopted at a time when there were not yet any Community coordinating rules. As is clear from the Court's case-law, Article 52 imposes 'an obligation to attain a precise result the fulfilment of which must be made easier by, but not made dependent on, the implementation of a programme of progressive measures. Consequently the fact that the Council has failed to issue the directives provided for by Articles 54 and 57 cannot serve to justify failure to meet the obligation' (judgment of 12 July 1984 in Case 107/83 *Ordre des avocats* v *Klopp* [1984] ECR 2971 at paragraph 10).

4. In the light of the foregoing considerations, I suggest that the Court should reply as follows to the questions referred by the tribunal du travail, Brussels, and the Belgian Hof van Cassatie by judgment of 30 April and 4 May 1987 repectively:

'Article 52 *et seq.* of the EEC Treaty must be interpreted as meaning that the legislation of a Member State is incompatible therewith where exemption from the payment of social security contributions of self-employed persons who work there depends on their affiliation at the same time, by virtue of an employment relationship, to a social security scheme in that State.'