Reports of Cases

OPINION OF ADVOCATE GENERAL
SHARPSTON
delivered on 21 October 2014[1]

Case C-623/13

Ministre de l'Économie et des Finances
v
Gérard de Ruyter
(Request for a preliminary ruling from the

Conseil d'État (France))

(Social security — Regulation (EEC) No 1408/71 — Substantive scope — Income from assets — Direct and sufficiently relevant link between contributions and legislation governing the branches of social security listed in Article 4 of Regulation No 1408/71)

1. The present reference for a preliminary ruling from the Conseil d'État (France) ('the referring court') concerns whether Regulation No 1408/71[2] applies to contributions which are levied on income from assets and which are then specifically allocated to the financing of social security. The answer to that question turns on the interpretation of Article 4 of that regulation, which enumerates the branches of social security which fall under its substantive scope.

2. In two judgments delivered in 2000,[3] the Court has already held in substance that the 'contribution sociale généralisée' (general social contribution, 'CSG') and the 'contribution pour le remboursement de la dette sociale' (social debt repayment contribution, 'CRDS') levied by France on employment income and substitute income[4] have a direct and sufficiently relevant link with the legislation governing the branches of social security listed in Article 4 and thus fall within the substantive scope of Regulation No 1408/71. That was so because, in contrast to levies designed to meet general public charges, the purpose of those contributions was specifically and directly to finance social security in France or to discharge the deficit of the general French social security scheme.[5] As a consequence, levying such contributions on employment income and substitute income of persons residing in France but subject to the social security legislation of another Member State (typically because they were employed in that latter state) was found to be inconsistent both with the prohibition against overlapping social security legislation laid down in Article 13(1) of Regulation No 1408/71 and with the Treaty guarantees of freedom of movement for workers and freedom of establishment.

1 — Original language: English.

2 — 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 (OJ English Special Edition 1971(II), p. 416), as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1) and further amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006 (OJ 2006 L 392, p. 1). Regulation No 1408/71 was replaced by 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). However, the facts giving rise to the main proceedings are still governed by Regulation No 1408/71.

3 — Judgments in *Commission* v *France*, C-34/98, EU:C:2000:84, and *Commission* v *France*, C-169/98, EU:C:2000:85.

4 — These categories of income cover in particular wages and salaries, pensions and unemployment allowances.

5 — 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.

3. The referring court asks in essence whether that reasoning also applies to charges of a similar kind levied by France on income from assets rather than employment income or substitute income. Does the objective of Regulation No 1408/71 to ensure free movement of employed and self-employed persons within the European Union mean that its scope is limited to charges levied on income related to the exercise of a professional activity?

4. The issue arises because Mr de Ruyter, a Netherlands national tax resident in France, challenges the CSG, CRDS and other social contributions specifically allocated to the financing of social security which that Member State requires him to pay on income derived from certain life annuity contracts that he concluded in the Netherlands ('his life annuities' or 'the life annuities') and that are unrelated to his professional activity. He argues that, because he is employed in the Netherlands, he should be subject only to that Member State's legislation on social security.

Legislation

European Union law

5. Regulation No 1408/71 was adopted by the Council on the basis of, in particular, Article 51 of the EEC Treaty (now Article 48 TFEU) in order to coordinate social security legislation as between the various Member States and thus reduce as far as possible the obstacles posed by national legislation to free movement of all workers, both employed and self-employed. The preamble to Regulation No 1408/71 states in particular that:

'…

… the provisions for coordination of national social security legislations fall within the framework of freedom of movement for workers who are nationals of Member States and should contribute towards the improvement of their standard of living and conditions of employment (recital 1);

…

… it is necessary to respect the special characteristics of national social security legislations and to draw up only a system of coordination (recital 4);

… it is necessary, within the framework of that coordination, to guarantee within the Community equality of treatment under the various national legislations to workers living in the Member States … (recital 5);

… the provisions for coordination must guarantee that workers moving within the Community … retain the rights and the advantages acquired and in the course of being acquired (recital 6);

… employed persons and self-employed persons moving within the Community should be subject to the social security scheme of only one single Member State in order to avoid overlapping of national legislations applicable and the complications which could result therefrom (recital 8);

…

… with a view to guaranteeing the equality of treatment of all workers occupied on the territory of a Member State as effectively as possible, it is appropriate to determine as the legislation applicable, as a general rule, that of the Member State in which the person concerned pursues employment o[r] self-employment (recital 10);

…’

6. Article 1(a) of Regulation No 1408/71 defines an ‘employed person’ as, in particular, ‘any person who is insured, compulsorily or on an optional continued basis, for one or more of the contingencies covered by the branches of a social security scheme for employed or self-employed persons or by a special scheme for civil servants’.

7. Pursuant to Article 1(j) of Regulation No 1408/71, ‘legislation’ means ‘in respect of each Member State statutes, regulations and other provisions and all other implementing measures, present or future, relating to the branches and schemes of social security covered by Article 4(1) and (2) or those special non-contributory benefits covered by Article 4(2a)’.

8. Article 2(1) of Regulation No 1408/71 defines the persons to whom it applies, namely ‘employed or self-employed persons and … students who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States or who are stateless persons or refugees residing within the territory of one of the Member States, as well as to the members of their families and their survivors’.

9. Article 4 of Regulation No 1408/71, entitled ‘Matters covered’, states:

‘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 shipowner in respect of the benefits referred to in paragraph 1.

…’

10. Pursuant to Article 13 of Regulation No 1408/71, which falls within Title II (‘Determination of the [applicable] legislation’):

‘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;

…'[6]

French law

11. Pursuant to Article 1600-0 C of the Code général des impôts (General Tax Code), natural persons who are tax resident in France are subject to the CSG, based on the net amount adopted for the assessment of income tax relating to the income from assets listed in that article.[7] The CSG is levied in particular on 'revenus fonciers' (real estate income), 'rentes viagères constituées à titre onéreux' (purchased life annuities),[8] 'revenus de capitaux mobiliers' (investment income) and certain 'plus-values' (capital gains) (Article L. 136-6 of the Code de la sécurité sociale (Social Security Code)).

12. Pursuant to Articles 1600-0 G and 1600-0 H of the General Tax Code, which are likewise to be read in conjunction with Article L. 136-6 of the Social Security Code, such persons are also subject to the CRDS, based on the same income.

13. Finally, pursuant to Article 1600-0 F bis of the General Tax Code, in the version applicable to the facts in the main proceedings, such 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 Code de l'action sociale et des familles (Social Assistance and Family Rights Code). The latter was applied for the first time on income from assets received in 2003.

14. According to the referring court, those contributions are used to finance compulsory French social security schemes. The CSG contributes to the financing of sickness insurance benefits, family benefits, non-contributory old-age pension benefits and benefits related to dependency. The CRDS is levied for the benefit of the Caisse d'amortissement de la dette sociale (Social Debt Redemption Fund) and intended to discharge social security deficits. The social levy of 2% is levied for the benefit of the Caisse nationale d'allocations familiales (National Family Allowance Fund) and the Caisse nationale d'assurance vieillesse des travailleurs salariés (National Old-Age Pension Fund for Employed Persons). The additional contribution of 0.3% is assigned to the Caisse nationale de solidarité pour l'autonomie (National Solidarity Fund for Independence).

Factual background, procedure and question referred

15. Gérard de Ruyter has been tax resident in France since 1994. Since 1996, he has been an employee of a company established in the Netherlands. From 1997 to 2004, Mr de Ruyter declared income made up of salary, income from investment capital, industrial and commercial profits and the life annuities. His salary originated exclusively from the Netherlands. According to the referring court, the life annuities did not form part of Mr de Ruyter's employment income because he did not claim that they came from a previously established capital fund to which his employer had contributed.

6 — Articles 14, 14c, 14f and 17 of Regulation No 1408/71 are not relevant to the present proceedings.

7 — The provisions of the French General Tax Code and Social Security Code set out in this section are those the referring court considers to be applicable in the main proceedings.

8 — A purchased life annuity is an insurance product whereby the annuitant purchases, in exchange for a lump sum, a series of future regular payments by the insurer that will continue for a specified term (for instance, until the annuitant's death).

16. As a tax resident in France, Mr de Ruyter was subject to income tax there on the entirety of his income, including his life annuities. The latter were subject in addition to the CSG, the CRDS, the social levy of 2% and, from 2003, the additional contribution of 0.3% to that levy.

17. Mr de Ruyter's challenges against the decisions imposing those contributions on him before the administrative courts of first instance of Marseilles and Nîmes (France) were rejected. On appeal, the administrative court of appeal of Marseilles reversed the judgments below and exempted Mr de Ruyter from the various social contributions applied on the life annuities which he had received between 1997 and 2004. The basis for that finding was, in essence, that Mr de Ruyter had already been subject to social contributions on that income in the Netherlands. Consequently, the levying of additional social contributions in France constituted an obstacle to his free movement rights.

18. The Minister for Budget, Public Accounts, the Civil Service and State Reform ('the Minister') appealed against those judgments to the Conseil d'État, which set them aside on the ground that the administrative court of appeal had erred in law when it held that the contributions in issue violated the taxpayer's right to move freely within the European Union, without examining whether the European Union had adopted measures intended to bring an end to such double taxation. Before the Conseil d'État, Mr de Ruyter maintains that, in accordance with the prohibition against overlapping legislation laid down in Article 13(1) of Regulation No 1408/71, he should be subject only to the legislation governing social security in the Netherlands. The Minister contends in substance that the link between the CSG, the CRDS, the social levy and the additional contribution, on the one hand, and the legislation on social security, on the other hand, is insufficient to trigger the application of that regulation.

19. Considering that the outcome of the appeal turns on the interpretation of the scope of Regulation No 1408/71, the Conseil d'État has requested a preliminary ruling on the following question:

'Do the tax levies on income from assets, such as the [CSG], the [CRDS], the social levy of 2% and the additional contribution [of 0.3%] 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?'

20. Written observations have been submitted by Mr de Ruyter, the French Government and the European Commission. Although the French Government requested a hearing, none was held.

Assessment

Preliminary remarks

21. I shall begin by setting out briefly the main characteristics of the system of coordination of the social security systems of the Member States put in place by Regulation No 1408/71 and the important clarifications made by the Court in the *Commission* v *France* cases [9] on when charges fall within the scope of that regulation.

22. As the Court expressly emphasised, however, those two cases concerned the levying of social contributions only in so far as they related to employment income and substitute income obtained by employed and self-employed persons resident in France and taxable in that Member State in connection with employment in another Member State. [10] I shall therefore go on to examine whether

9 — Judgments in *Commission* v *France*, EU:C:2000:84; and *Commission* v *France*, EU:C:2000:85.

10 — Judgments in *Commission* v *France*, EU:C:2000:84, paragraph 19; and *Commission* v *France*, EU:C:2000:85, paragraph 18.

contributions allocated specifically to the financing of social security but levied on income which is *not* related to the exercise of a professional activity are also governed by Regulation No 1408/71, taking into account the latter's objective to ensure free movement of employed and self-employed persons. Does a direct and sufficiently relevant link also exist between such contributions and the legislation governing social security?

23. Lastly, I shall address briefly the question whether the contributions in issue, assuming that they do fall within the scope of that regulation, are consistent with the prohibition against overlapping social security legislation under Article 13(1) thereof.

The guidance provided by the case-law on Regulation No 1408/71

24. Member States are competent to organise their own social security systems.[11] In the absence of harmonisation, it is for each Member State to determine the conditions governing the right or duty to be insured with a social security scheme, the level of contributions payable by insured persons[12] and the income to be taken into account when calculating social security contributions.[13] However, in exercising that power, Member States must comply with EU law.[14]

25. Regulation No 1408/71 puts in place a system of coordination, concerning in particular the determination of the legislation applicable to employed and self-employed workers who make use, under various circumstances, of their right to freedom of movement.[15] Regulation No 1408/71 must be interpreted in the light of the objective pursued by the Treaty article on which it is based (Article 48 TFEU), which is to contribute to the establishment of the greatest possible freedom of movement for migrant workers.[16] To that end, as is clear from the 5th, 6th and 10th recitals in its preamble as well as Article 3 thereof, that regulation seeks to guarantee as effectively as possible equality of treatment of all persons who are economically active on the territory of a Member State and not to penalise workers who exercise their right to free movement.

26. Furthermore, the provisions of Title II of Regulation No 1408/71, which include Article 13(1), constitute a complete system of conflict rules so that Member States can no longer determine to whom their legislation applies and the territory within which that legislation takes effect.[17] Those provisions are intended not only to prevent the simultaneous application of a number of national legislative systems and the complications which might ensue, but also to ensure that persons covered by Regulation No 1408/71 are not left without social security cover because there is no legislation which is applicable to them.[18] In principle, it is therefore contrary to Regulation No 1408/71, in particular Article 13(1) thereof, to require a person to pay social contributions in a Member State other than the Member State designated in accordance with Regulation No 1408/71.[19]

11 — See, most recently, judgment in *Salgado González*, C-282/11, EU:C:2013:86, paragraph 35 and case-law cited.

12 — See, inter alia, judgment in *Blanckaert*, C-512/03, EU:C:2005:516, paragraph 49.

13 — See, inter alia, judgments in *Terhoeve*, C-18/95, EU:C:1999:22, paragraph 51; and *Derouin*, C-103/06, EU:C:2008:185, paragraphs 26 and 27.

14 — See, inter alia, judgments in *Decker*, C-120/95, EU:C:1998:167, paragraph 23; *Kohll*, C-158/96, EU:C:1998:171, paragraph 19; *Derouin*, EU:C:2008:185, paragraph 25; and *Stewart*, C-503/09, EU:C:2011:500, paragraph 77.

15 — See in particular recital 4 in the preamble to Regulation No 1408/71. See also, inter alia, judgments in *Commission* v *Germany*, C-68/99, EU:C:2001:137, paragraphs 22 and 23; *Piatkowski*, C-493/04, EU:C:2006:167, paragraphs 19 and 20; and *Nikula*, C-50/05, EU:C:2006:493, paragraph 20.

16 — Judgments in *Belbouab*, 10/78, EU:C:1978:181, paragraph 5; *Hosse*, C-286/03, EU:C:2006:125, paragraph 24; *Hudzinski and Wawrzyniak*, C-611/10 and C-612/10, EU:C:2012:339, paragraph 53; and *da Silva Martins*, C-388/09, EU:C:2011:439, paragraph 70.

17 — Judgment in *Luijten*, 60/85, EU:C:1986:307, paragraph 14.

18 — See, inter alia, judgment in *Kits van Heijningen*, C-2/89, EU:C:1990:183, paragraph 12. See also judgment in *Partena*, C-137/11, EU:C:2012:593, paragraph 45 and case-law cited.

19 — Judgments in *Perenboom*, 102/76, EU:C:1977:71, paragraph 13; and *Aldewereld*, C-60/93, EU:C:1994:271, paragraph 26.

27. Article 4 of Regulation No 1408/71 makes it clear that national social security schemes are subject in their entirety to the application of the rules of EU law.[20] For a contribution to fall within the scope of that regulation, there must be a direct and sufficiently relevant link between it and the legislation governing one of the branches of social security listed in Article 4.[21] The decisive criterion in this respect is whether a contribution is specifically allocated to funding a Member State's social security scheme, irrespective of whether benefits are obtained in return.[22] In the *Commission* v *France* cases, the Court made a distinction in this respect between charges such as the CSG and CRDS levied on employment income or substitute income, on the one hand, which are 'allocated specifically and directly to financing social security in France' and therefore present such a link, and levies 'designed to meet general public charges', on the other hand.[23] The fact that these contributions were classified as taxes under national legislation did not mean that they could not be regarded as falling within the scope of Regulation No 1408/71 and be caught by the prohibition against overlapping legislation in Article 13(1).[24]

28. Those principles have important consequences for the present reference, in which it is not disputed that the social contributions levied on income from assets are specifically intended to finance certain branches of social security or to discharge the social security deficits in France.[25]

29. First, the fact that the CSG on income from assets is regarded under French law as a supplementary tax on income rather than a distinct social security contribution, and that it is collected and monitored by the tax authorities in accordance with the rules applicable to income tax, has no bearing on whether or not that contribution is governed by Regulation No 1408/71. That conclusion follows directly from the *Commission* v *France* cases and is consistent with the purpose of that regulation, which is to establish a system of coordination between Member States concerning inter alia the determination of the legislation applicable to employed and self-employed workers who make use of their right to freedom of movement.[26] Considering the variety of methods by which social security is funded, including taxation,[27] that coordination might be jeopardised if classifying a contribution as a tax under national law were sufficient to place it outside the scope of Regulation No 1408/71.

30. Second, contrary to the suggestion made by the referring court and by the Commission, the fact that payment of the social contributions in issue does not give the payer entitlement to any direct and identifiable benefit is immaterial when assessing whether those contributions have a direct and sufficiently relevant link with the legislation governing social security. As the Court confirmed in *Perez Naranjo*, whether a sufficiently identifiable link exists between a social contribution and an allowance is relevant for the purposes of categorising that allowance as a special non-contributory benefit within the meaning of Article 4(2)(a) of Regulation No 1408/71. However, that question is distinct from the more general issue of whether a social contribution is covered by the substantive scope of that regulation.[28]

20 — The definition of 'legislation' in Article 1(j) is remarkable for its breadth. See, inter alia, judgment in *Bozzone*, 87/76, EU:C:1977:60, paragraph 10.

21 — Judgments in *Rheinhold & Mahla*, C-327/92, EU:C:1995:144, paragraphs 15 and 23; *Commission* v *France*, EU:C:2000:84, paragraph 35; and *Commission* v *France*, EU:C:2000:85, paragraph 33.

22 — Judgments in *Commission* v *France*, EU:C:2000:84, paragraph 40; *Commission* v *France*, EU:C:2000:85, paragraph 38; and *Allard*, C-249/04, EU:C:2005:329, paragraph 16.

23 — Judgments in *Commission* v *France*, EU:C:2000:84, paragraphs 37 and 38; and *Commission* v *France*, EU:C:2000:85, paragraph 35.

24 — Judgments in *Commission* v *France*, EU:C:2000:84, paragraph 34; and *Commission* v *France*, EU:C:2000:85, paragraph 32.

25 — See point 14 above.

26 — See the case-law cited in footnotes 15 to 19 above.

27 — In that respect, see the overview of the principles governing the financing of social security schemes in the various Member States available on the website of the EU's Mutual Information System on Social Protection (MISSOC): www.missoc.org/MISSOC/INFORMATIONBASE/COMPARATIVETABLES/MISSOCDATABASE/comparativeTableSearch_PREVIOUS.jsp (accessed 25 August 2014).

28 — Judgment in *Perez Naranjo*, C-265/05, EU:C:2007:26, paragraph 41, where the Court examined whether the fact that CSG financed the Fonds de solidarité vieillesse (Old-age Solidarity Fund) meant that an allowance paid by that fund was to be regarded as a special non-contributory benefit.

31. Third, the argument of the French Government that the contributions in issue do not replace social contributions is not decisive. True, in the *Commission* v *France* case concerning the CSG on employment income and substitute income, the Court held that the link between that contribution and the legislation governing social security in that Member State was 'also clearly revealed by the fact that … the levy replace[d] in part social security contributions which were a heavy burden on low and medium levels of pay …'.[29] However, it is clear both from that wording and from the fact that the Court made no similar point in its other judgment delivered on the same day (regarding CRDS) that such a circumstance is not essential in order to establish that a direct and sufficiently relevant link exists between a social contribution and the legislation governing social security. More fundamentally, as a matter of principle it seems to me that the answer to the question whether Regulation No 1408/71 applies to a contribution levied by a Member State should not depend on the nature of social contributions levied by that Member State in the past. The objective of coordination pursued by Regulation No 1408/71 would be undermined if only charges introduced to replace social contributions already in place were governed by that regulation.

Does it matter that the contributions in issue are levied on income which is not related to the exercise of a professional activity?

32. I now turn to the central argument of the French Government and the Commission, namely that contributions levied on income which is not related to a past or current professional activity cannot have a direct and sufficiently relevant link with the legislation governing social security and therefore lie outside the scope of Regulation No 1408/71.

33. Neither Article 4 nor Article 13 of Regulation No 1408/71 draws a distinction based on the nature of the income on which a social contribution is levied.

34. These provisions must be interpreted in the light of the purpose of Article 48 TFEU, which is to contribute to establishing the greatest possible freedom of movement for migrant workers.[30] As is clear from the eighth recital in the preamble to Regulation No 1408/71, the prohibition on overlapping legislation in Article 13(1) is intended to prevent migrant workers from being faced, by being subject to several overlapping sets of rules, with any complication that would stand in the way of their exercising their freedom of movement rights.[31]

35. As I see it, contributions such as those in issue constitute an obstacle to the free movement of workers as much as the CSG and CRDS levied on employment income or substitute income.

36. On the one hand, the Member State of employment may also levy social contributions on income from assets. Based on the information available to the Court, that seems indeed to be the case in the main proceedings: the life annuities which Mr de Ruyter received from 1997 to 2004 were apparently included in the basis for calculating the social contributions that he paid in the Netherlands. In my view, the prospect of being subject to two sets of social levies on the same income in two Member States is clearly likely to discourage a worker such as Mr de Ruyter from keeping his employment in the Netherlands and moving his residence to France.[32]

29 — Judgment in *Commission* v *France*, EU:C:2000:85, paragraph 36.

30 — See point 25 above.

31 — Judgments in *Kits van Heijningen*, EU:C:1990:183, paragraph 12; and *Allard*, EU:C:2005:329, paragraph 28; and order in *Vogler*, C-242/99, EU:C:2000:582, paragraph 26. See also the Opinion of Advocate General La Pergola in *Commission* v *France*, C-34/98, EU:C:1999:392, point 24.

32 — It is settled case-law that any Community national who, irrespective of his place of residence and his nationality, works in a Member State other than that of his residence falls within the scope of Article 45 TFEU. See to that effect, inter alia, judgments in *Ritter-Coulais*, C-152/03, EU:C:2006:123, paragraph 31; *Renneberg*, C-527/06, EU:C:2008:566, paragraph 36; and *S*, C-457/12, EU:C:2014:136, paragraph 39. I should add that, pursuant to settled case-law, even minor restrictions of that freedom are prohibited unless they are justified. See, most recently, judgment in *Zentralbetriebsrat der gemeinnützigen Salzburger Landeskliniken Betriebs*, C-514/12, EU:C:2013:799, paragraph 34 and case-law cited.

37. On the other hand, even where the Member State of employment does not levy social contributions on income from assets, the inequality of treatment remains.

38. Here, I recall that the principle that the legislation of a single Member State is to apply is aimed at guaranteeing equality of treatment for all workers occupied on the territory of a Member State as effectively as possible. [33]

39. In the *Commission* v *France* cases, the Court held in substance that requiring workers who are insured in their Member State of employment to finance in addition, even if only partially, the social security scheme of their Member State of residence gives rise to unequal treatment under Article 13 of Regulation No 1408/71, since all other residents in that State are required to contribute only to the latter's social security scheme. [34] Such unequal treatment automatically constitutes an obstacle to the free movement of workers for which, in view of that provision, there can be no justification. [35]

40. That reasoning can be transposed to the social contributions in issue in the main proceedings. Those contributions, which are imposed on all tax residents in France regardless of whether they are subject to the legislation on social security in another Member State, place residents employed in another Member State at a disadvantage as compared with those who are employed and reside in France and therefore contribute only to the financing of social security in that Member State (and it may be the case that the Member State of employment compensates for not levying social charges on income from assets by levying higher contributions on other types of income; or that, within the overall scheme of its social security system, it simply offers less generous benefits).

41. Furthermore, whilst it is true that Regulation No 1408/71 is intended to ensure free movement of employed and self-employed persons within the European Union, the exercise (current or past) of a professional activity is immaterial when assessing whether a person is covered by that regulation.

42. According to settled case-law, a person is an 'employed person' within the meaning of Regulation No 1408/71 where he is covered, even if only in respect of a single risk, on a compulsory or optional basis, by a general or special social security scheme mentioned in Article 1(a) of that regulation, irrespective of the existence of an employment relationship. [36]

43. A consistent approach should be followed when determining the material and personal scope of application of Regulation No 1408/71. The concept of 'legislation' under Article 1(j) encompasses all measures which are specifically intended to finance social security. There is thus in my view no reason nevertheless to draw a distinction that depends on the nature of the income on which such financing is based. To do so would, as I see it, create discrepancies in the level of protection afforded by Article 13(1) of Regulation No 1408/71 to persons moving (or intending to move) within the European Union, depending on whether their overall income resulted from the exercise of a professional activity, from assets or from a combination of the two.

33 — Recital 10 in the preamble to Regulation No 1408/71.

34 — 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.

35 — Judgments in *Commission* v *France*, EU:C:2000:84, paragraphs 47 and 48; and *Commission* v *France*, EU:C:2000:85, paragraphs 44 and 45.

36 — Judgments in *Pierik*, 182/78, EU:C:1979:142, paragraphs 4 and 7; *Martínez Sala*, C-85/96, EU:C:1998:217, paragraph 36; *Dodl and Oberhollenzer*, C-543/03, EU:C:2005:364, paragraph 31; and *Borger*, C-516/09, EU:C:2011:136, paragraph 28. Regulation No 883/2004, which repealed Regulation No 1408/71, codifies that case-law, stating that it is to apply to nationals of a Member State, stateless persons and refugees residing in a Member State 'who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors' (Article 2(1)).

Member States' competence to regulate social security and taxation

44. I do not accept the French Government's submission that applying Regulation No 1408/71 to the social contributions in issue encroaches on Member States' competence to organise the financing of their social security schemes or on their competence to tax.

45. Member States must comply with EU law when exercising their power to organise their social security schemes.[37] It follows that the fact that the national rules at issue in the main proceedings concern financing social security through taxation does not exclude the application of Treaty rules, in particular those relating to freedom of movement for workers.[38]

46. As Advocate General La Pergola observed in his Opinion in the *Commission* v *France* cases,[39] such a conclusion does not call into question Member States' freedom to secure the funding of social security through fiscal measures. Rather, it concerns the freedom to tax only in so far as the latter affects the income of migrant workers or, more generally, all nationals of one Member State who, in the exercise of one of the fundamental freedoms guaranteed by the Treaties, are subject or have been subject to the social security legislation of one or more Member States.

47. Furthermore, I do not share the view of the French Government that applying the reasoning of the Court in the *Commission* v *France* cases to the social contributions in issue in the main proceedings would necessarily mean that *any* tax which contributes to the financing of social security is regarded as having a direct and sufficiently relevant link with the legislation on social security (the French Government advanced this argument specifically in the context of consumption taxes).

48. On the one hand, only levies which are *specifically* allocated to the financing of social security are to be regarded as forming part of the legislation of a Member State on social security and thus governed by the prohibition against overlapping legislation under Regulation No 1408/71. The mere circumstance that part of the revenue generated by a tax contributes to the financing of social security is therefore insufficient to bring that tax within the scope of that regulation.[40]

49. On the other hand, a direct and sufficiently relevant link would, I think, be unlikely to exist between a consumption tax levied in a Member State and the legislation governing social security of that Member State, even if that tax is specifically allocated to the financing of social security.[41] It is difficult to see how the mere fact that a person insured in one Member State is subject in another Member State to consumption taxes specifically allocated to the financing of its social security would create complications for that person.

50. Unlike income taxes, consumption taxes are levied by a State on purchases of goods and services on its territory, irrespective of the place of residence and the place of employment of the consumer. Consequently, if a person such as Mr de Ruyter buys goods or services on French territory, that purchase normally gives rise to the payment of consumption taxes in France only, even if that person is employed (and insured) in another Member State.

37 — See point 24 above.

38 — See by analogy, judgment in *Terhoeve*, EU:C:1999:22, paragraph 35.

39 — EU:C:1999:392, point 2.

40 — That reasoning can be applied, for example, to VAT levied in France. Based on the information provided by the French Government, 7.85% of the proceeds of that tax contribute to the financing of sickness insurance, maternity insurance, invalidity insurance and death insurance in that Member State.

41 — According to the French Government, the taxes on health or contingency insurance contracts, on betting and sports gambling, on tobacco, on alcoholic beverages and on soft drinks also contribute to the financing of social security in France.

51. That is clear in the context of VAT and excise duties, which are governed by specific EU regimes designed to avoid double taxation.[42] More generally, however, a consumption tax on purchases of services in another Member State constitutes, in my view, a restriction on the free movement of services within the Union and is therefore in principle prohibited, including when it is imposed on similar domestic services.[43] Likewise, it seems to me that it would be difficult for a Member State to impose a consumption tax on purchases of goods in another Member State without infringing the prohibition on charges having equivalent effect to import duties if no such charge is imposed on similar domestic products.[44] Even if an equivalent charge were imposed on the acquisition of similar goods on the domestic territory, the consumption tax would necessarily entail an obligation for the consumer to declare that he had bought the goods in question in another Member State. That would make acquiring goods outside the domestic territory more complicated. It would therefore probably be regarded as a measure equivalent to an import restriction inconsistent with Article 34 TFEU.[45]

52. To sum up: while levying social contributions such as those at issue in the main proceedings is liable to cause complications for Mr de Ruyter because he is already insured in the Netherlands,[46] the same cannot be said about consumption taxes that he is charged when he purchases goods or services in France. It is difficult to conceive how such purchases might lawfully be subject to additional consumption taxes in another Member State.

53. More generally, unlike charges levied on income, consumption taxes become due (in addition to the net price) because a good or service is purchased. Exempting persons who are insured in, and subject to the social security legislation of Member State A from paying consumption taxes levied by Member State B that are specifically intended to finance its social security scheme would create an incentive to purchase the goods and services in question in Member State B rather than in Member State A. The ensuing competitive disadvantage for the goods and services marketed in Member State A (at least if they are subject there to similar consumption taxes) would be difficult to reconcile with the logic and spirit of the internal market.

42 — See recital 62 in the preamble to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) and recitals 30 and 31 in the preamble to, and Article 33(6) of, Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12). Admittedly, the VAT due in the context of an 'intra-Community supply' is payable by the taxable customer in the Member State where the goods arrive, i.e. where that customer is established. In such a case, however, no VAT is payable in the Member State where the goods were purchased. There is therefore normally no risk of double-taxation (see Articles 40 to 42 of Directive 2006/112).

43 — Article 56 TFEU requires not only the elimination of all discrimination on grounds of nationality but also the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, which is liable to prohibit, impede or render less attractive the activities of a service provider established in another Member State where it lawfully provides similar services. See most recently, judgment in *Duomo Gpa and Others*, C-357/10 to C-359/10, EU:C:2012:283, paragraph 36 and case-law cited.

44 — Article 28(1) TFEU. The prohibition against customs duties on imports and exports in trade between Member States and charges having equivalent effect covers all charges levied at the time of, or by reason of, importation, which are imposed specifically on an imported product but not on a similar domestic product and hence alter the cost price of that product. See judgments in *Capolongo*, 77/72, EU:C:1973:65, paragraph 12; and *Compagnie commerciale de l'Ouest and Others*, C-78/90 to C-83/90, EU:C:1992:118, paragraph 23.

45 — See, for instance, judgment in *Commission* v *Italy*, 154/85, EU:C:1987:292, paragraph 12.

46 — See points 35 to 40 above.

Article 13(1) of Regulation No 1408/71

54. Lastly, the French Government has argued that, assuming that the contributions in issue are governed by Regulation No 1408/71, their levying would be inconsistent with that provision only if the life annuities received by Mr de Ruyter were also subject to social security contributions in the Netherlands. In that context, the French Government challenges Mr de Ruyter's claim that he paid social contributions on his life annuities in the Netherlands.[47] It also refers to the judgment in *Piatkowski*, where the Court examined whether a particular income had been subject to social contributions in *two* Member States.[48]

55. That argument is based on a misreading of Article 13(1) of Regulation No 1408/71.

56. It is true that the levying of social contributions on the same income in more than one Member State is caught by that provision.[49] The latter's scope is however not limited to such circumstances. Once a person comes within the scope of Regulation No 1408/71, the rule in Article 13(1) prohibiting overlapping systems is an absolute rule subject only to the exceptions contained in Articles 14c and 14f.[50] Pursuant to Article 13(2)(a), a person employed in the territory of one Member State is to be subject *only* to the legislation of that State even if he resides in the territory of another Member State. The order for reference makes it clear that Mr de Ruyter is employed in the Netherlands but resides in France. He should therefore be subject only to the Netherlands' social security legislation.

57. Consequently, assuming (as I have concluded above) that the social contributions at issue present a direct and sufficiently relevant link with the legislation on social security in France to trigger Regulation No 1408/71, to impose them on Mr de Ruyter would be to disregard the prohibition on overlapping legislation in Article 13(1), and the conflict rule laid down in Article 13(2)(a), of that regulation.[51] Whether the life annuities received by Mr de Ruyter in the Netherlands were in fact subject to social contributions there is thus irrelevant.

58. That conclusion is not called into question by the Court's judgment in *Piatkowski*. That case concerned the specific situation of a person who was simultaneously employed in one Member State and self-employed in another Member State. By way of exception to Article 13(1) of Regulation No 1408/71, such a person is (unlike Mr de Ruyter) subject simultaneously to the legislation on social security in both Member States: he is thus required in principle to pay such contributions as may be required of him by the legislation of each Member State.[52] The Court made clear however that, even in that situation, to interpret Article 14c(b) of Regulation No 1408/71 as permitting double contributions to be levied in respect of the same income would penalise workers who exercise their right to free movement and thus would clearly run counter to the objective of that regulation.[53]

47 — This is a question of fact that has ultimately to be decided by whichever national court is competent to rule on it. That said, the case-file lodged with the Court's Registry with the order for reference suggests that social contributions were indeed levied in the Netherlands on the life annuities in question: see point 36 above.

48 — Judgment in *Piatkowski*, EU:C:2006:167.

49 — See point 26 above.

50 — See points 37 to 40 above.

51 — As Advocate General Warner put it in his Opinion in *Perenboom*, 102/76, EU:C:1977:57, 'no Member State other than that whose legislation is … rendered applicable [by Regulation No 1408/71] is entitled to exact contributions from the worker concerned'.

52 — Article 14c(b) of Regulation No 1408/71. See judgment in *Piatkowski*, EU:C:2006:167, paragraph 22. See also judgment in *de Jaeck*, C-340/94, EU:C:1997:43, paragraph 39.

53 — Judgment in *Piatkowski*, EU:C:2006:167, paragraph 27.

Conclusion

59. For all the above reasons, I suggest that the Court should rule as follows in answer to the question raised by the Conseil d'État:

Contributions on income from assets such as the general social contribution on income from assets (CSG), the social debt repayment contribution (CRDS), the social levy of 2% and the additional contribution to that levy in issue in the main proceedings have a direct and sufficiently relevant link with the French legislation governing the branches of social security listed in 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. They thus fall within the substantive scope of that regulation.