JUDGMENT OF THE COURT
17 February 1993 *

In Joined Cases C-159/91 and C-160/91,

REFERENCES to the Court by the Tribunal des Affaires de Sécurité Sociale de l'Hérault (France) for a preliminary ruling under Article 177 of the EEC Treaty in the proceedings pending before that court between

Christian Poucet

and

Assurances Générales de France (AGF) and Caisse Mutuelle Régionale du Languedoc-Roussillon (Camulrac)

and between

Daniel Pistre

and

Caisse Autonome Nationale de Compensation de l'Assurance Vieillesse des Artisans (Cancava)

on the interpretation of Articles 85 and 86 of the EEC Treaty,

THE COURT,

composed of: O. Due, President, G. C. Rodríguez Iglesias, M. Zuleeg and J. L. Murray (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse, and D. A. O. Edward, Judges,

* Language of the case: French.

Advocate General: G. Tesauro,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Christian Poucet and Daniel Pistre, the plaintiffs in the main proceedings, by Richard Marcou, of the Montpellier Bar,

— Camulrac, AGF and Cancava, the defendants in the main proceedings, by Alain Coste and Charles-Henri Coste, of the Montpellier Bar, and Florence Lyon-Caen, Avocat with right of audience before the Cour d'Appel, Paris,

— the French Government, by Jean-Pierre Puissochet, Director for Legal Affairs, Ministry of Foreign Affairs, acting as Agent, and Claud Chavance, Attaché Principal d'Administration Centrale in the same Ministry, acting acting as Joint Agent,

— the German Government, by Ernst Röder, Ministerialrat, Federal Ministry of the Economy, acting as Agent,

— the Commission of the European Communities, by Enrico Traversa, of its Legal Service, acting as Agent, assisted by Hervé Lehman, of the Paris Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of the plaintiffs in the main proceedings, the defendants in the main proceedings, the French Government, represented by Philippe Pouzoulet, Assistant Director, Directorate for Legal Affairs, Ministry of Foreign Affairs, and Claude Chavance, acting as Agents, and the Commission, at the hearing on 10 June 1992,

after hearing the Opinion of the Advocate General at the sitting on 29 September 1992,

gives the following

Judgment

1 By judgments of 14 January and 11 February 1991, received at the Court Registry on 18 June 1991, the Tribunal des Affaires de Sécurité Sociale de l'Hérault (Social Security Court, Hérault) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Articles 85 and 86 of the Treaty.

2 Those questions were raised in proceedings brought by Christian Poucet against Caisse Mutuelle Régionale du Languedoc-Roussillon, which manages the sickness and maternity insurance scheme for self-employed persons in non-agricultural occupations, and the company which acts as its agent, Assurances Générales de France, and by Daniel Pistre against Caisse Autonome Nationale de Compensation de l'Assurance Vieillesse des Artisans, Clermont-Ferrand.

3 In those proceedings, Mr Poucet and Mr Pistre seek the annulment of orders served on them to pay social security contributions to the two funds mentioned above. Without challenging the principle of compulsory affiliation to a social security scheme, they consider that, for such purposes, they should be free to approach any private insurance company established within the territory of the Community and not have to be subject to the conditions laid down unilaterally by the above-mentioned organizations, which, they maintain, hold a dominant position, contrary to the rules on freedom of competition laid down in the Treaty.

4 Considering that the cases involved problems of interpretation of Community law, the Tribunal des Affaires de Sécurité Sociale de l'Hérault stayed the proceedings and referred to the Court for a preliminary ruling two questions — having the same wording in each case — as to

'Whether an organization charged with managing a special social security scheme is to be regarded as an undertaking for the purposes of Articles 85 and 86 of the Treaty;

Whether the dominant position attributed by the national legislation of a Member State to an organization charged with the management of a special social security scheme is compatible with the Common Market.'

5 Reference is made to the Report for the Hearing for a fuller account of the facts, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The first question

6 As the Court held in Case 238/82 *Duphar* v *Netherlands* [1984] ECR 523, paragraph 16, Community law does not detract from the powers of the Member States to organize their social security systems.

7 Under the social security system at issue in the main proceedings, self-employed persons in non-agricultural occupations are the subject of compulsory social protection, including that provided by autonomous statutory schemes, in particular the sickness and maternity insurance scheme, which is applicable to all self-employed persons in non-agricultural occupations and the old-age insurance scheme for the craft occupations concerned.

8 Those schemes pursue a social objective and embody the principle of solidarity.

9 They are intended to provide cover for all the persons to whom they apply, against the risks of sickness, old age, death and invalidity, regardless of their financial status and their state of health at the time of affiliation.

10 The principle of solidarity is, in the sickness and maternity scheme, embodied in the fact that the scheme is financed by contributions proportional to the income from the occupation and to the retirement pensions of the persons making them; only recipients of an invalidity pension and retired insured members with very modest resources are exempted from the payment of contributions, whereas the benefits are identical for all those who receive them. Furthermore, persons no longer covered by the scheme retain their entitlement to benefits for a year, free of charge. Solidarity entails the redistribution of income between those who are better off and those who, in view of their resources and state of health, would be deprived of the necessary social cover.

11 In the old-age insurance scheme, solidarity is embodied in the fact that the contributions paid by active workers serve to finance the pensions of retired workers. It is also reflected by the grant of pension rights where no contributions have been made and of pension rights that are not proportional to the contributions paid.

12 Finally, there is solidarity between the various social security schemes, in that those in surplus contribute to the financing of those with structural financial difficulties.

13 It follows that the social security schemes, as described, are based on a system of compulsory contribution, which is indispensable for application of the principle of solidarity and the financial equilibrium of those schemes.

14 It is apparent from the documents that the management of the schemes at issue in the main proceedings was entrusted by statute to social security funds whose activities are subject to control by the State, acting through, in particular, the Minister for Social Security, the Minister for the Budget and public bodies such as the Inspectorate General of Finance and the Inspectorate General for Social Security.

15 In the discharge of their duties, the funds apply the law and thus cannot influence the amount of the contributions, the use of assets and the fixing of the level of benefits. For management of the sickness and maternity scheme, the regional sickness funds may entrust to certain organizations, such as those that are governed in France by the Code de la Mutualité (Code governing mutual societies) or the Code des Assurances (Insurance Code), the task of collecting contributions and paying out benefits. However, it does not appear that those organizations, which, in the performance of that task, act only as agents of the sickness funds, are referred to by the judgments of the national court.

16 The foregoing considerations must be taken into account in examining whether the term 'undertaking', within the meaning of Articles 85 and 86 of the Treaty, includes organizations charged with managing a social security scheme of the kind referred to by the national court.

17 The Court has held (in particular in Case C-41/90 *Höfner* v *Elser* [1991] ECR I-1979, paragraph 21) that in the context of competition law the concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed.

18 Sickness funds, and the organizations involved in the management of the public social security system, fulfil an exclusively social function. That activity is based on the principle of national solidarity and is entirely non-profit-making. The benefits paid are statutory benefits bearing no relation to the amount of the contributions.

19 Accordingly, that activity is not an economic activity and, therefore, the organizations to which it is entrusted are not undertakings within the meaning of Articles 85 and 96 of the Treaty.

20 The answer to be given to the national court must therefore be that the concept of an undertaking within the meaning of Articles 85 and 86 of the Treaty does not encompass organizations charged with the management of social security schemes of the kind referred to in the judgments of the national court.

The second question

21 In view of the answer given to the first question, it is unnecessary to answer the second question.

Costs

22 The costs incurred by French the German Governments 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 actions pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions submitted to it by the Tribunal des Affaires de Sécurité Sociale de l'Hérault by judgments of 14 January and 11 February 1991, hereby rules:

The concept of undertaking within the meaning of Articles 85 and 86 of the Treaty does not encompass organizations charged with the management of social security schemes of the kind referred to in the judgments of the national court.

Due Rodríguez Iglesias Zuleeg Murray

Mancini Schockweiler Moitinho de Almeida Grévisse Edward

Delivered in open court in Luxembourg on 17 February 1993.

J.-G. Giraud
Registrar

O. Due
President