JUDGMENT OF THE COURT (Second Chamber)
16 February 1995 *

In Case C-425/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Schleswig-Holsteinisches Landessozialgericht (Germany) for a preliminary ruling in the proceedings pending before that court between

Calle Grenzshop Andresen GmbH & Co. KG

and

Allgemeine Ortskrankenkasse für den Kreis Schleswig-Flensburg

with the Bundesanstalt für Arbeit, the Bundesversicherungsanstalt für Angestellte and Mr Börge Wandahl as joined parties in the main proceedings,

on the interpretation of Article 14(1)(a) and (2)(b)(i) of Council Regulation (EEC) No 1408/71 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 and Article 12a of Council Regulation (EEC)

* Language of the case: German.

No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71, in the versions codified by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6),

THE COURT (Second Chamber),

composed of: F. A. Schockweiler (Rapporteur), President of the Chamber, G. F. Mancini and G. Hirsch, Judges,

Advocate General: C. O. Lenz,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Calle Grenzshop Andresen GmbH & Co. KG, by Reinhold Steinhusen, Rechtsanwalt, Flensburg,

— the Bundesversicherungsanstalt für Angestellte, by Michael Mutz, Verwaltungsdirektor,

— the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry for Economic Affairs, acting as Agent,

— the Italian Government, by Danilo del Gaizo, Avvocato dello Stato, acting as Agent,

— the Commission of the European Communities, by Christopher Docksey, of the Legal Service, and Horstpeter Kreppel, a German civil servant seconded to the Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Calle Grenzshop Andresen GmbH & Co. KG, the Italian Government, the United Kingdom, represented by Philippa Watson, Barrister, and the Commission at the hearing on 24 November 1994,

after hearing the Opinion of the Advocate General at the sitting on 19 January 1995,

gives the following

Judgment

By order of 15 September 1993, received at the Court on 18 October 1993, the Schleswig-Holsteinisches Landessozialgericht (Higher Social Court, Schleswig-Holstein) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty four questions on the interpretation of Article 14(1)(a) and (2)(b)(i) of Council Regulation (EEC) No 1408/71 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 and Article 12a of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71, in the versions codified by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6).

2 Those questions were raised in proceedings between Calle Grenzshop Andresen GmbH&Co. KG (hereafter 'Calle') and the Allgemeine Ortskrankenkasse für den Kreis Schleswig-Flensburg (Local General Sickness Fund, Schleswig-Flensburg, hereafter 'the AOK') concerning the payment of contributions which the AOK claims from Calle in respect of German social insurance for its employees, including in particular Mr Börge Wandahl.

3 Calle operates a business in Germany, near to the German-Danish border, which retails food, alcoholic drinks and gifts. It employs almost exclusively Danish workers who are resident in Denmark. Those employees include Mr Wandahl, who has worked for Calle since 1979, initially as a salesman, and since 1981 as a manager.

4 Neither Mr Wandahl nor the other Danish employees were the subject of any notification by Calle to the German social insurance institutions. By decision of 21 December 1987 the AOK claimed from Calle payment of social insurance contributions with respect to Mr Wandahl amounting to DM 74 627.23 for the period from 1 April 1982 to 31 August 1987. Calle appealed against that notice of contribution and claimed that during that period Mr Wandahl had also pursued his activities in Denmark on its behalf for about ten hours each week and that, consequently, under Article 14(2)(b)(i) of Regulation No 1408/71, he was exclusively subject to Danish legislation.

5 The AOK rejected the appeal by decision of 17 August 1990, whereupon Calle brought proceedings before the Sozialgericht Schleswig (Schleswig Social Court). Since the Sozialgericht considered that Mr Wandahl did not fulfil the requirements of Article 14(2)(b)(i) of Regulation No 1408/71, but that the activities pursued by him in Denmark fell under Article 14(1)(a) and that he was therefore compulsorily subject to German legislation, it dismissed the action by judgment of 4 December 1992.

6 On 9 February 1993 Calle appealed against that judgment to the Schleswig-Holsteinisches Landessozialgericht. In the course of that appeal Calle produced a certificate dated 27 January 1993 on form E 101, as provided for in Article 12a(2)(a) of Regulation No 574/72, from the Danish Ministry of Social Affairs stating that Mr Wandahl fulfilled the requirements of Article 14(2)(b) of Regulation No 1408/71 since 1 January 1985. Calle claimed that, by reason of the mandatory nature of Community law, the AOK was bound by that certificate and, consequently, could no longer argue that Mr Wandahl had not in fact pursued an activity in Denmark.

7 The Schleswig-Holsteinisches Landessozialgericht considered that the outcome of the dispute depended on the interpretation of the provisions of Community law relied on by the parties. It therefore decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'1. Is there a posting within the meaning of Article 14(1)(a) of Regulation (EEC) No 1408/71, or is it equivalent to a posting, if a Danish worker residing in the Kingdom of Denmark and employed exclusively by an undertaking whose place of business is in the Federal Republic of Germany is posted by that undertaking to Denmark to perform work there for that undertaking, on a regular basis and for several hours each week, the anticipated duration of the posting not being limited to 12 months?

2. Is a person normally employed in the territory of two Member States, within the meaning of Article 14(2) of Regulation (EEC) No 1408/71, if he is employed exclusively by an undertaking whose place of business is in the Federal Republic of Germany and, in connection with that employment, regularly pursues his activity partly (for several hours each week) in the territory of the Kingdom of Denmark?

3. Does "activity" within the meaning of Article 14(2)(b)(i) of Regulation (EEC) No 1408/71 cover the term "employed" within the meaning of that provision?

4. (a) Is the competent institution of a Member State legally bound by a form E 101 certificate issued under Article 12a of Regulation (EEC) No 574/72 by the (non-competent) institution of another Member State?

(b) If so, is this the case even if the certificate has been given retroactive effect?'

The first and second questions

8 In its first two questions, which should be considered together, the national court wishes to ascertain whether the situation of a Danish worker, residing in Denmark and employed exclusively by an undertaking whose seat is in Germany, who in the course of that employment relationship, regularly, for several hours each week and for a period not limited to twelve months pursues his activity partly in Denmark, falls under Article 14(1)(a) or Article 14(2)(b)(i) of Regulation No 1408/71.

9 The Court has consistently held that the provisions of Title II of Regulation No 1408/71, of which Article 14 forms part, constitute a complete and uniform system of conflict rules, the aim of which is to ensure that workers moving within the Community are to be subject to the social security scheme of only one Member State, in order to prevent more than one legislative system from being applicable and to avoid the complications which may result from that situation (see, in particular, Case C-71/93 *Van Poucke* v *Rijksinstitut voor de Sociale Verzekeringen der Zelfstandigen* [1994] ECR I-1101, paragraph 22).

10 Article 14(1)(a) of Regulation No 1408/71 provides that a person employed in the territory of a Member State by an undertaking to which he is normally attached who is posted by that undertaking to the territory of another Member State to perform work there for that undertaking is to continue to be subject to the legislation of the first Member State, provided that the anticipated duration of that work does not exceed twelve months and that he is not sent to replace another person who has completed his term of posting.

11 Consequently, a situation such as that described in the first two questions cannot fall within that provision, since, as is apparent from the questions themselves, the duration of the work performed by the person concerned in Denmark for the undertaking to which he is normally attached, which has its seat in Germany, exceeds 12 months.

12 On the other hand, that situation does fall within Article 14(2)(b)(i) of Regulation No 1408/71 which provides that a person normally employed in the territory of two or more Member States is to be subject to the legislation of the Member State in whose territory he resides, if he pursues his activity partly in that territory or if he is attached to several undertakings or several employers who have their registered offices or places of business in the territory of different Member States.

13 It follows from the use of the conjunction 'or' that the first limb of the alternative is applicable even where the person concerned pursues his activities on the territory of two or more Member States for one and the same undertaking.

14 That conclusion is borne out by the fact that Article 14(2)(b)(ii) of Regulation No 1408/71 provides expressly that, if he does not reside in the territory of any of

the Member States where he is pursuing his activity, a person normally employed in the territory of two or more Member States is to be subject to the legislation of the Member State in whose territory the registered office or place of business of the undertaking or individual (in the singular) employing him is situated.

15 Accordingly, it should be stated in reply to the first two questions that the situation of a Danish worker, residing in Denmark and employed exclusively by an undertaking with its seat in Germany, who in the course of that employment relationship, regularly, for several hours each week and for a period not limited to twelve months pursues his activity partly in Denmark, falls under Article 14(2)(b)(i) of Regulation No 1408/71.

The third question

16 In its third question the national court asks whether, 'activity' within the meaning of Article 14(2)(b)(i) of Regulation No 1408/71 covers the term 'employed'.

17 That question must be answered in the affirmative.

18 It follows from the reply given to the first two questions that Article 14(2)(b)(i) of Regulation No 1408/71 is also applicable to a person normally employed in two or more Member States for one and the same undertaking.

19 Moreover, the situation of a person who is normally self-employed in the territory of two or more Member States and that of a person who is simultaneously employed in the territory of one Member State and self-employed in the territory of another Member State are governed by Article 14a(2) and Article 14c of Regulation No 1408/71 respectively.

20 Accordingly, it should be stated in reply to the third question that 'activity' within the meaning of Article 14(2)(b)(i) of Regulation No 1408/71 covers the term 'employed'.

The fourth question

21 It follows from the grounds of the order for reference that this question is asked only in the event that the situation referred to in the first two questions falls within Article 14(1)(a) of Regulation No 1408/71.

22 Since that is not the case, the fourth question has become devoid of purpose.

Costs

23 The costs incurred by the German and Italian Governments, the United Kingdom 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 action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions referred to it by the Schleswig-Holsteinisches Landessozialgericht, by order of 15 September 1993, hereby rules:

1. **The situation of a Danish worker, residing in Denmark and employed exclusively by an undertaking with its seat in Germany, who in the course of that employment relationship, regularly, for several hours each week and for a period not limited to twelve months pursues his activity partly in Denmark, falls under Article 14(2)(b)(i) of Council Regulation (EEC) No 1408/71 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.**

2. **'Activity' within the meaning of Article 14(2)(b)(i) of Regulation (EEC) No 1408/71 covers the term 'employed'.**

Schockweiler Mancini Hirsch

Delivered in open court in Luxembourg on 16 February 1995.

R. Grass

Registrar

F. A. Schockweiler

President of the Second Chamber