Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

21 February 2013 *

(Direct life assurance — Annual tax on assurance transactions — Directive 2002/83/EC — Articles 1(1)(g) and 50 — Definition of 'Member State of the commitment' — Assurance undertaking established in the Netherlands — Policyholder having taken out an assurance contract in the Netherlands and transferred his habitual residence to Belgium after the contract was concluded — Freedom to provide services)

In Case C-243/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rechtbank van eerste aanleg te Brussel (Court of First Instance, Brussels) (Belgium), made by decision of 6 May 2011, received at the Court on 20 May 2011, in the proceedings

RVS Levensverzekeringen NV

v

Belgische Staat,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet, M. Ilešič, E. Levits (Rapporteur) and J.-J. Kasel, Judges,

Advocate General: J. Kokott,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 June 2012,

after considering the observations submitted on behalf of:

— RVS Levensverzekeringen NV, by S. Lodewijckx and A. Claes, advocaten,

— the Belgian Government, by M. Jacobs and J.C. Halleux, acting as Agents,

— the Estonian Government, by M. Linntam, acting as Agent,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the European Commission, by N. Yerrell, K.-P. Wojcik and F. Wilman, acting as Agents,

* Language of the case: Dutch.

after hearing the Opinion of the Advocate General at the sitting on 6 September 2012,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 1(1)(g) and 50 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ 2002 L 345, p. 1), and of Article 49 TFEU and Article 56 TFEU.

2 The request has been made in proceedings between RVS Levensverzekeringen NV ('RVS') and the Belgische Staat (Belgian State) regarding the payment of the annual tax on life assurance contracts.

Legal context

European Union law

3 Directive 2002/83 was repealed with effect from 1 November 2012 by Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ 2009 L 335, p. 1). The dispute in the main proceedings, however, remains governed by Directive 2002/83.

4 Recital 3 in the preamble to Directive 2002/83 is worded as follows:

'It is necessary to complete the internal market in direct life assurance, from the point of view both of the right of establishment and of the freedom to provide services in the Member States, to make it easier for assurance undertakings with head offices in the Community to cover commitments situated within the Community and to make it possible for policy holders to have recourse not only to assurers established in their own country, but also to assurers which have their head office in the Community and are established in other Member States.'

5 Recital 13 in the preamble to that directive states:

'For practical reasons, it is desirable to define provision of services taking into account both the assurer's establishment and the place where the commitment is to be covered. Therefore, commitment should also be defined. …'.

6 Recital 55 in the preamble to Directive 2002/83 states:

'Some Member States do not subject assurance transactions to any form of indirect taxation, while the majority apply special taxes and other forms of contribution. The structures and rates of such taxes and contributions vary considerably between the Member States in which they are applied. It is desirable to prevent existing differences leading to distortions of competition in assurance services between Member States. Pending subsequent harmonisation, application of the tax systems and other forms of contribution provided for by the Member States in which commitments entered into are likely to remedy that problem and it is for the Member States to make arrangements to ensure that such taxes and contributions are collected.'

7 Article 1(1) of that directive states:

‘For the purposes of this Directive:

...

(d) “commitment” shall mean a commitment represented by one of the kinds of insurance or operations referred to in Article 2;

...

(g) “Member State of the commitment” shall mean the Member State where the policy holder has his/her habitual residence or, if the policy holder is a legal person, the Member State where the latter’s establishment, to which the contract relates, is situated;

(h) “Member State of the provision of services” shall mean the Member State of the commitment, if the commitment is covered by an assurance undertaking or a branch situated in another Member State;

...’

8 Under Article 32 of the same directive:

‘1. The law applicable to contracts relating to the activities referred to in this Directive shall be the law of the Member State of the commitment. However, where the law of that State so allows, the parties may choose the law of another country.

2. Where the policy holder is a natural person and has his/her habitual residence in a Member State other than that of which he/she is a national, the parties may choose the law of the Member State of which he/she is a national.

…’

9 Article 36 of Directive 2002/83, entitled ‘Information for policy holders’, provides:

‘1. Before the assurance contract is concluded, at least the information listed in Annex III(A) shall be communicated to the policy holder.

2. The policy holder shall be kept informed throughout the term of the contract of any change concerning the information listed in Annex III(B).

…’

10 Article 41 of the directive, entitled ‘Freedom to provide services: prior notification to the home Member State’, is worded as follows:

‘Any assurance undertaking that intends to carry on business for the first time in one or more Member States under the freedom to provide services shall first inform the competent authorities of the home Member State, indicating the nature of the commitments it proposes to cover.’

11 Under Title IV, entitled 'Provisions relating to the right of establishment and freedom to provide services', Article 50 of Directive 2002/83, entitled 'Taxes on premiums', provides:

'1. Without prejudice to any subsequent harmonisation, every assurance contract shall be subject exclusively to the indirect taxes and parafiscal charges on assurance premiums in the Member State of the commitment …

2. The law applicable to the contract pursuant to Article 32 shall not affect the fiscal arrangements applicable.

3. Pending future harmonisation, each Member State shall apply to those assurance undertakings which cover commitments situated within its territory its own national provisions for measures to ensure the collection of indirect taxes and parafiscal charges due under paragraph 1.'

Belgian law

12 Article 173 of the Code on miscellaneous levies and taxes (Wetboek diverse rechten en taksen, the 'WDRT') provides:

'Insurance transactions are subject to an annual tax when the risk is situated in Belgium.

The risk of the insurance transaction is deemed to be situated in Belgium if the policyholder has his habitual residence in Belgium, or, if the policyholder is a legal person, if the establishment of that legal person to which the contract relates is situated in Belgium.

…

"Establishment" as referred to in the second paragraph, means the principal establishment of the legal person and any other permanent presence of that legal person, in whatever form.'

13 Article 175/3 of the WDRT states:

'The tax will be reduced to 1.10% for life assurance transactions, even if they are linked to an investment fund, and the establishment of annuities or temporary annuities, when they are entered into by natural persons.

The term "life assurance" refers to personal assurance to pay a fixed amount, where the assured event is dependent only on the length of life of a person.'

14 Article 176/1 of the WDRT provides that the tax liability is calculated on the total amount of the insurance premiums, the personal contributions and the employers' contributions, plus charges to be paid or borne during the tax year either by the policyholders, or by the affiliates and their employers.

The dispute in the main proceedings and the questions referred for a preliminary ruling

15 RVS is a Netherlands insurance company which has no principal establishment, agency, branch, representative or place of business in Belgium. RVS entered into life assurance contracts with a certain number of persons who, on the date of signature of the assurance contract, resided in the Netherlands, but who subsequently emigrated to Belgium.

16 A dispute has arisen between RVS and the Belgian tax authority as to whether the annual tax of 1.10% on insurance transactions carried out by natural persons, introduced with effect from 1 January 2006, is payable also on life assurance contracts entered into with an assurer established in the Netherlands, which does not have an establishment in Belgium, when on the date of the signature of the assurance contract the policyholder resided in the Netherlands but subsequently emigrated to Belgium.

17 After a meeting with the Belgische Staat, on 29 January 2009 RVS filed returns, on a 'without prejudice' basis, in respect of the annual tax on insurance transactions for tax years 2006 and 2007, in which it declared assurance premiums of EUR 801 178 for 2006 and EUR 702 636 for 2007. The Belgian tax authority then imposed a tax of EUR 8 813 for the 2006 tax year and EUR 7 729 for the 2007 tax year, which RVS paid on 4 February 2009, again on a without prejudice basis.

18 Taking the view that it was not liable to pay the tax, on 16 June 2009 RVS applied for a refund from the tax authority; these were rejected as unfounded by decision of 1 September 2009.

19 On 30 April 2010 RVS brought an action against the decision of 1 September 2009 before the referring court.

20 Before that court, the parties to the main proceedings disagree as to the interpretation of Articles 1(1)(g) and 50 of Directive 2002/83, in particular as regards whether the place of habitual residence of the policyholder must be determined on the date of entry into the commitment or on the date of payment of the premium.

21 In those circumstances, the Rechtbank van eerste aanleg te Brussel decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Does Article 50 of Directive 2002/83/EC … preclude a national rule as laid down in Article 173 and Article 175/3 of the [WDRT], which provides that insurance transactions (including life assurance policies) are subject to an annual tax, when the risk is situated in Belgium, in particular if the policyholder has his/her habitual residence in Belgium, or, if the policyholder is a legal person, if the establishment of that legal person, to which the contract relates, is situated in Belgium, without any account being taken of the place of residence of the policyholder at the time that the contract was concluded?

2. Do the Community principles concerning the elimination, between the Member States of the Community, of obstacles to the freedom of movement of persons and the freedom to provide services arising out of Article 49 [TFEU] and Article 56 [TFEU], preclude a national rule as laid down in Article 173 and Article 175/3 of the [WDRT], which provides that insurance transactions (including life assurance policies) are subject to an annual tax, when the risk is situated in Belgium, in particular if the policyholder has his/her habitual residence in Belgium, or, if the policyholder is a legal person, if the establishment of that legal person, to which the contract relates, is situated in Belgium, without any account being taken of the place of residence of the policyholder at the time that the contract was concluded?'

Consideration of the questions referred

The first question

22 By its first question, the referring court asks, in essence, whether Article 50 of Directive 2002/83 precludes a Member State from collecting an indirect tax on life assurance premiums paid by policyholders who are natural persons having their habitual residence in that Member State, when the assurance contracts concerned were taken out in another Member State in which those policyholders had their habitual residence on the date the contracts were taken out.

23 In accordance with settled case-law, in interpreting a provision of European Union law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, inter alia, Case 292/82 *Merck* [1983] ECR 3781, paragraph 12; Case C-191/99 *Kvaerner* [2001] ECR I-4447, paragraph 30; Case C-34/05 *Schouten* [2007] ECR I-1687, paragraph 25; and Case C-112/11 *ebookers.com Deutschland* [2012] ECR, paragraph 12).

24 As is apparent from Recital 3 to Directive 2002/83, that directive was adopted having regard to the need to complete the internal market in direct life assurance, from the point of view both of the right of establishment and of the freedom to provide services in the Member States, to make it easier for assurance undertakings with head offices in the European Union to cover commitments situated within the European Union and to make it possible for policyholders to have recourse not only to assurers established in their own Member State, but also to assurers which have their head office in the European Union and are established in other Member States.

25 Since indirect taxation of life assurance transactions has not yet been the subject of harmonisation at European Union level, as is noted also in Recital 55 to Directive 2002/83, some Member States do not subject assurance transactions to any form of indirect taxation while others apply special taxes and other forms of contribution, the structure and rate of which vary considerably.

26 It is apparent from that same recital that, in adopting Directive 2002/83, the European Union legislature sought to prevent existing differences from leading to distortions of competition in assurance services between Member States and took the view, pending subsequent harmonisation, that the application of the tax system and other forms of contribution provided for by the Member State in which the commitment is entered into is likely to remedy that problem.

27 Therefore, Article 50 of Directive 2002/83, found in Title IV of that directive containing the provisions relating to the right of establishment and the freedom to provide services, provides in paragraph (1) that, without prejudice to any subsequent harmonisation, every assurance contract is to be subject exclusively to the indirect taxes and parafiscal charges on assurance premiums in the Member State of the commitment. The 'Member State of the commitment' is defined, in Article 1(1)(g) of that directive, as being the Member State where the policyholder has his or her habitual residence, if the policyholder is a natural person.

28 RVS and the Estonian Government submit, in essence, that Article 50(1) of Directive 2002/83, read in conjunction with Article 1(1)(g) of the same directive, must be interpreted as meaning that the Member State of the commitment is the Member State where the policyholder had his habitual residence on the date the life assurance contract was concluded and that, after the policyholder's move to another Member State, while retaining his assurance contract, the Member State of the commitment remains unchanged. They thus defend, in relation to that situation, an interpretation of the term 'Member State of the commitment' that they describe as 'static'.

29 By contrast, the Belgian and the Austrian Governments and also the European Commission take the view that the Member State of the commitment is determined on the date of the payment of the assurance premium on which the tax must be levied. Those Governments as well as the European Commission support an interpretation of that term that they describe as 'dynamic'.

30 First of all, it should be pointed out, in that context, that Article 1(1)(g) of Directive 2002/83, which defines the 'Member State of the commitment' for the purposes of that directive, does not define the date on which the habitual residence of the policyholder must be determined; nor does it specify whether factual changes to the place of habitual residence of the policyholder during the term of the life assurance contract may affect the definition of the Member State of the commitment.

31 Likewise, Article 50(1) of Directive 2002/83 does not specify that account must be taken of the habitual residence of the policyholder on the date of the conclusion of the assurance contract; nor does it set another single relevant date for determining which Member State has competence to subject the assurance contract to indirect taxes and parafiscal charges for the entire term of the contract, despite a possible change of the habitual residence of the policyholder occurring during the assurance contract.

32 Analysis of the wording of Article 50(1) of Directive 2002/83, read in conjunction with Article 1(1)(g) of that directive, establishes only that the habitual residence of the policyholder constitutes the relevant criterion for determining which Member State has competence to subject an assurance contract to indirect taxes and parafiscal charges on assurance premiums.

33 However, as the Commission rightly points out, the habitual residence of the policyholder is, by its very nature, a criterion that may change, in particular during a long-term contract such as a life assurance contract.

34 Consequently, the choice of such a criterion and the absence of a reference to the habitual residence of the policyholder on the date of the conclusion of the assurance contract or to another single relevant date in the wording of Article 50(1) of Directive 2002/83 support the 'dynamic' interpretation of that provision.

35 Next, with regard to the overall scheme of Directive 2002/83, it should be noted, first, that it is apparent from the analysis of Article 50(3) of that directive that the Member State with competence over taxation is to apply its own national provisions for measures to ensure the collection of the indirect taxes and parafiscal charges at issue. However, that provision does not make it possible to establish how that competent Member State is to be determined.

36 Indeed, contrary to what RVS claims, the use, in some of the language versions of that provision, such as the versions in French and Dutch, of the wording 'assurance undertakings which assume commitments on its territory' in referring to the undertakings to which the competent Member State is to apply those measures, does not lead to the conclusion that competence over taxation is determined on the date of signature of the assurance contract.

37 In addition to the fact that the wording used in those versions may be subject to different interpretations in so far as it may refer to the signature of the assurance contract as well as to the place where the commitments are situated, as the Advocate General has pointed out at point 40 of her Opinion, other language versions, such as the version in English, contradict the reading proposed by RVS. Indeed, that version, in which clear reference is made to the undertakings which cover commitments situated in a given Member State, does not contain any reference to the conclusion or to the signature of the assurance contract.

38 Secondly, with regard to Article 32(1) of Directive 2002/83, invoked by RVS and by the Estonian Government, which states that the law applicable to contracts relating to the activities referred to in that directive is to be the law of the Member State of the commitment, the Court notes that even if it is indeed possible to interpret that provision to the effect that the applicable law does not change when the policyholder transfers his habitual residence, that does not mean that that interpretation must be applied also to the interpretation of Article 50(1) of the directive.

39 As was pointed out at paragraph 30 of this judgment, the definition of the 'Member State of the commitment', as set out in Article 1(1)(g) of Directive 2002/83, does not specify the appropriate date on which the habitual residence of the policyholder is to be determined. Consequently, as the Advocate General has observed at point 43 of her Opinion, since the relevant date does not form part of the definition of the term 'Member State of the commitment', that term may be defined differently depending on the provision in which it is used.

40 Moreover, Article 50(2) of Directive 2002/83 provides that the law applicable pursuant to Article 32 of that directive is not to affect the fiscal arrangements applicable, which illustrates, as the Advocate General has observed at point 45 of her Opinion, the independence of the applicable law from the applicable fiscal arrangements.

41 Thirdly, the Estonian Government submits that Article 41 of Directive 2002/83, which provides that any assurance undertaking wishing to carry on business for the first time in one or more Member States under the freedom to provide services must first inform the supervisory authorities in the home Member State, indicating the nature of the risks and of the commitments it proposes to cover, precludes the 'dynamic' interpretation of the term 'Member State of the commitment'. If the basis for determining the habitual residence of the policyholder were the date of the payment of the assurance premium, then a situation may arise in which the assurance undertaking, unknowingly and without having informed the supervisory authorities, carries on business in a Member State other than its home Member State under the freedom to provide services.

42 It should be noted that, in a situation such as that at issue in the main proceedings, the fact that the habitual residence of the policyholder is transferred to a Member State other than that of the establishment of the assurance undertaking with which the assurance contract has been concluded, is apt to bring that situation within the scope of the provisions relating to the freedom to provide services, irrespective of the fiscal arrangements applicable to the contract at issue. Indeed, in order to invoke the provisions of the TFEU relating to the freedom to provide services, it is sufficient for services to be provided to nationals of a Member State on the territory of another Member State (see, to that effect, Case C-55/98 *Vestergaard* [1999] ECR I-7641, paragraph 18).

43 Directive 2002/83 also provides, at Article 1(1)(h), that the 'Member State of the provision of services' is defined as being the Member State of the commitment, if the commitment is covered by an assurance undertaking situated in another Member State. It is apparent from Recital 13 to that directive that, for practical reasons, the provision of services is to be defined taking into account both the assurer's establishment and the place where the commitment is to be covered.

44 The answer to the question to what extent the obligations arising from Article 41 of Directive 2002/83 apply to an assurance undertaking which finds itself bound by contract to a policyholder whose habitual residence is situated in a Member State other than that in which the undertaking is established, as a result of a change to that residence by the policyholder during the contract, follows from the interpretation of Article 41, read together with the provisions referred to in the preceding paragraph, but has no bearing on the determination of which Member State has competence over taxation for the purposes of Article 50(1) of Directive 2002/83.

45 Fourthly, the fact that the policyholder must be informed, in accordance with Annex III(A) to Directive 2002/83, to which reference is made in Article 36(1) of the directive, about the tax arrangements applicable to the type of policy before the assurance contract is concluded, but does not have to be informed about those arrangements during the term of the assurance contract, according to Annex III(B) to Directive 2002/83, to which reference is made in Article 36(2) of the directive, does not mean that the 'dynamic' interpretation of Article 50(1) of that directive cannot be upheld.

46 It is common ground that, in the absence of harmonisation at the level of the European Union, a Member State may, at any time, introduce or abolish indirect taxation on assurance transactions or amend its rate or basis of assessment. Yet Article 36(2) of Directive 2002/83 and Annex III(B) to that directive do not require the policyholder to be kept informed where such a change takes place within the fiscal arrangements of that same Member State. Therefore, even on the 'static' interpretation of Article 50(1) of the directive, the policyholder may find that the tax arrangements initially applicable to the assurance contract have in essence been changed, without the assurance undertaking's being required to communicate such changes to him.

47 It must, therefore, be held that the wording of Article 50(1) of Directive 2002/83 and its interpretation in combination with other provisions of that directive permit both interpretations of that provision and that its meaning must be ascertained having regard primarily to the objectives pursued by both that provision and Directive 2002/83 as a whole.

48 By providing that every assurance contract is to be subject exclusively to the indirect taxes and parafiscal charges on assurance premiums in the Member State of the commitment, Article 50(1) of Directive 2002/83 is intended to confer on a single Member State the competence to tax life assurance premiums, in order thereby to eliminate double taxation of those premiums.

49 Whilst it follows from the case-law of the Court that such a conferral of competence must, as far as possible, be based on a concrete and objective criterion (see, to that effect, *Kvaerner*, paragraph 52), there is nothing to suggest that the competence over taxation conferred in accordance with that criterion has to remain unchanged throughout the term of the contract.

50 The criterion chosen in Directive 2002/83 means that the competence of a Member State to levy indirect taxes and parafiscal charges on assurance premiums depends on there being a connection between the territory of that Member State and the policyholder, constituted by the habitual residence of the policyholder.

51 The 'static' interpretation of Article 50(1) of Directive 2002/83 results in a connection that existed on the date of signature of the assurance contract being preferred over a current connection existing on the date of payment of the assurance premiums.

52 However, as stated by both RVS and the Belgian Government, in the case of indirect taxes on assurance premiums, the chargeable event for tax purposes is not the conclusion of the assurance contract, but rather the payment of the assurance premiums.

53 It follows that the Member State with competence to tax the assurance premiums should be the Member State with whose territory the policyholder has a connection on the date of payment of the premiums in the form of habitual residence and that the 'dynamic' interpretation of Article 50(1) of Directive 2002/83 must be upheld.

54 That finding is not called into question by the need to ascertain for every assurance premium payment the habitual residence of the policyholder.

55 Indeed, even on a contrary interpretation (according to which the habitual residence of the policyholder is determined only once, on the date of signature of the assurance contract), following every change of the Member State of habitual residence of the policyholder the habitual residence of the policyholder on the date of the conclusion of the assurance contract would have to be ascertained, on the date of payment of the assurance premium.

56 In the case of long-term contracts, as life assurance contracts often are, adducing evidence as to the habitual residence of the policyholder on the date of the conclusion of the assurance contract may prove more difficult than providing evidence as to that policyholder's current situation.

57 Article 50(1) of Directive 2002/83 should also be examined in the light of its objective, namely to prevent existing differences between the tax systems in force in the different Member States from leading to distortions of competition in assurance services between Member States.

58 By linking the competence over taxation of assurance premiums to the habitual residence of the policyholder, Directive 2002/83 is intended to ensure that the supply of life assurance contracts available to a policyholder is, irrespective of the Member State of establishment of the assurance undertaking, subject to the same tax treatment and that, consequently, the choice of the provider of life assurance services is not influenced by considerations relating to taxation of those premiums. Assurance undertakings are, accordingly, not placed at an advantage or a disadvantage by the more or less favourable taxation in their home Member State and can compete on an equal footing with assurance undertakings established in the Member State of habitual residence of the policyholder.

59 Only the 'dynamic' interpretation of Article 50(1) of Directive 2002/83 makes it possible to ensure that equality and to prevent distortions of competition by ensuring that the same tax treatment is applied to an existing contract and to any new contract.

60 As observed by the Advocate General at points 67 and 70 of her Opinion, although more limited than competition for the supply of new assurance contracts, there is competition between existing assurance contracts and those potentially concluded with a different assurance undertaking through the policyholder's changing his assurance undertaking. The possibility of retaining, after a change to the Member State of habitual residence, the benefit of the tax treatment applicable in the Member State in which the policyholder had his habitual residence on the date the contract was concluded, more favourable than that in force in the Member State in which the policyholder has his new habitual residence, is liable to deter the policyholder from changing assurance undertaking. However, in the case of a 'dynamic' interpretation of Article 50(1) of Directive 2002/83 such a tax-based deterrent does not arise.

61 It follows that the objectives pursued by Article 50(1) of Directive 2002/83 allow change of the habitual residence of the assurance policyholder to be taken into account.

62 It remains to be determined whether such an interpretation is compatible with the general objective of Directive 2002/83. As recalled in paragraph 24 of this judgment, that directive is intended to achieve the completion of the internal market in direct life assurance, from the point of view both of the right of establishment and of the freedom to provide services in the Member States, to make it easier for assurance undertakings with their head office in the European Union to cover commitments situated within the European Union and to make it possible for policyholders to have recourse not only to assurers established in their own Member State, but also to assurers which have their head office in the European Union and are established in other Member States.

63 Inasmuch as the issue of the 'static' or 'dynamic' interpretation of Article 50(1) of Directive 2002/83 arises when the Member State of habitual residence of the policyholder on the date of signature of the assurance contract differs from the Member State of habitual residence on the date of payment of the

assurance premium and the assurance undertaking is or was previously in a Member State other than that of the policyholder's habitual residence, the interpretation of that provision should be examined from the point of view of the freedom to provide services.

64 It must indeed be admitted that the change to the fiscal arrangements applicable to the assurance contract, as a result of the establishment by the policyholder of his habitual residence in a Member State other than that in which the assurance undertaking with which that contract was taken out is established, involves an additional burden on the assurance undertaking, since that undertaking must acquaint itself with and apply different tax rules even though it may not have chosen to provide assurance services in that Member State.

65 It must, however, be borne in mind, that, as has been pointed out in paragraph 46 of this judgment, in the absence of harmonisation at the level of the European Union, a Member State may, at any time, introduce or abolish indirect taxation on assurance transactions or amend its rate or basis of assessment. Therefore, even on a 'static' interpretation of Article 50(1) of Directive 2002/83, assurance undertakings may find themselves in a situation in which, without a change of Member State having competence over taxation of the assurance premiums, new tax rules are applicable to the assurance premiums collected by those undertakings.

66 As regards the argument put forward by RVS and the Estonian Government relating to the additional costs and to the administrative difficulties created by the need to obtain information about the Member State of habitual residence of the policyholder throughout the term of the assurance contract, as well as the fiscal arrangements in force in that Member State, the fact remains that, first, in the event of moving house, the policyholder is normally required, or can be required, contractually, to inform his assurer. Secondly, the obligation to obtain information about the legislation in force is as applicable under the 'static' interpretation of Article 50(1) of Directive 2002/83 as it is under the 'dynamic' interpretation of that provision. Furthermore, in circumstances in which the assurance services are carried out under the freedom to provide services, and both the assurance undertaking and the policyholder have left the Member State of the provision of services, the 'static' interpretation of that provision can require an assurance undertaking to keep itself informed about the fiscal arrangements of a Member State with which neither the assurance undertaking nor the policyholder any longer has any connection.

67 As regards the risk, referred to by the Estonian Government, of termination of the assurance contract in the event of the policyholder's moving to a Member State other than that of his habitual residence on the date of conclusion of the contract, even if such a risk exists, that risk arises not directly from the 'dynamic' interpretation of Article 50(1) of Directive 2002/83, but rather from a future and hypothetical act by the assurance undertaking and, consequently, must be regarded as too uncertain and indirect to affect the interpretation of that provision.

68 Therefore, it must be concluded that the 'dynamic' interpretation of Article 50(1) of Directive 2002/83 enables the objectives of preventing double taxation and distortions of competition to be better achieved, while also being compatible with the general objective of that directive relating to the completion of the internal market in direct life assurance, in particular, from the point of view of the freedom to provide services.

69 In the light of all of the foregoing, the answer to the first question is that Article 50 of Directive 2002/83 must be interpreted as not precluding a Member State from collecting an indirect tax on life assurance premiums paid by policyholders who are natural persons having their habitual residence in that Member State, when the assurance contracts concerned were taken out in another Member State in which those policyholders had their habitual residence on the date the contracts were taken out.

The second question

70 Given the answer to the first question, there is no need to answer the second question.

Costs

71 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 50 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance must be interpreted as not precluding a Member State from collecting an indirect tax on life assurance premiums paid by policyholders who are natural persons having their habitual residence in that Member State, when the assurance contracts concerned were taken out in another Member State in which those policyholders had their habitual residence on the date the contracts were taken out.

[Signatures]