JUDGMENT OF THE COURT (Second Chamber)

4 October 2012 (*)

(Social security — Determination of the legislation applicable — Regulation (EEC) No 1408/71 — Article 14(2)(b) — Person normally employed in the territory of two or more Member States — Successive employment contracts — Employer established in the Member State of habitual residence of the worker — Employment performed exclusively in other Member States)

In Case C-115/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the S?d Apelacyjny — S?d Pracy I Ubezpiecze? Spo?ecznych w Warszawie (Poland), made by decision of 15 December 2010, received at the Court on 2 March 2011, in the proceedings

Format Urz?dzenia i Monta?e Przemys?owe sp. z o.o.

v

Zak?ad Ubezpiecze? Spo?ecznych,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, A. Rosas, A. Ó Caoimh (Rapporteur), A. Arabadjiev and C. G. Fernlund, Judges,

Advocate General: J. Mazák,

Registrar: R. ?ere?, Administrator,

having regard to the written procedure and further to the hearing on 29 February 2012,

after considering the observations submitted on behalf of:

– Format Urz?dzenia i Monta?e Przemys?owe sp. z o.o., by W. Bara?ski, adwokat,

– Zak?ad Ubezpiecze? Spo?ecznych, by J. Czarnowski and M. Drewnowski, radcowie prawni,

– W. Kita, by W. Bara?ski, adwokat,

– the Polish Government, by M. Szpunar and by A. Siwek-?lusarek and J. Fa?dyga, acting as Agents,

– the Belgian Government, by M. Jacobs and L. Van den Broeck, acting as Agents,

– the German Government, by T. Henze, J. Möller and A. Wiedmann, acting as Agents,

– the European Commission, by V. Kreuschitz and M. Owsiany-Hornung, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 May 2012,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 14(2)(b) 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 and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), as 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').

2 The reference has been made in proceedings between Format Urz?dzenia i Monta?e Przemys?owe sp. z o.o. ('Format'), and one of its employees, Mr Kita, on the one hand, and Zak?ad Ubezpiecze? Spo?ecznych (Social Security Institution, 'the ZUS'), on the other, concerning the determination of the legislation applicable to Mr Kita under Regulation No 1408/71.

Legal context

Regulation No 1408/71

3 According to the sixth recital in the preamble to Regulation No 1408/71, the provisions for coordination must guarantee that workers moving within the European Community and their dependants and their survivors retain the rights and the advantages acquired and in the course of being acquired.

4 According to the seventh recital in the preamble to this regulation, this objective must be attained in particular by aggregation of all the periods taken into account under the various national legislations for the purpose of acquiring and retaining the right to benefit.

5 As is apparent from its eighth recital in the preamble to that regulation, that regulation seeks to ensure that the persons concerned are, in principle, subject to the social security scheme of only one Member State in order to avoid overlapping of national legislations applicable and the complications which could result therefrom.

6 Article 1(h) of Regulation No 1408/71 provides that, for the purposes of the regulation, 'residence' means habitual residence.

7 In Title II of Regulation No 1408/71 ('Determination of the legislation applicable'), Article 13 ('General rules'), provides:

'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 the provisions of 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;

...

(f) a person to whom the legislation of a Member State ceases to be applicable, without the legislation of another Member State becoming applicable to him in accordance with one of the rules laid down in the aforegoing subparagraphs or in accordance with one of the exceptions or special provisions laid down in Articles 14 to 17 shall be subject to the legislation of the Member State in whose territory he resides in accordance with the provisions of that legislation alone.'

8 Under that same title, Article 14 of Regulation No 1408/71, ('Special rules applicable to persons, other than mariners, engaged in paid employment'), provides:

'Article 13(2)(a) shall apply subject to the following exceptions and circumstances:

(1) (a) 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 shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of that work does not exceed 12 months and that he is not sent to replace another person who has completed his term of posting;

...

(2) A person normally employed in the territory of two or more Member States shall be subject to the legislation determined as follows:

(a) A person who is a member of the travelling or flying personnel of an undertaking which, for hire or reward or on its own account, operates international transport services for passengers or goods by rail, road, air or inland waterway and has its registered office or place of business in the territory of a Member State shall be subject to the legislation of the latter State, with the following restrictions: ...

(b) A person other than that referred to in (a) shall be subject:

(i) 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;

(ii) to the legislation of the Member State in whose territory is situated the registered office or place of business of the undertaking or individual employing him, if he does not reside in the territory of any of the Member States where he is pursuing his activity.'

9 The aggregation referred to in the seventh recital in the preamble to Regulation No 1408/71 is provided for in particular in Articles 10a(2), 18, 38, 45, 64 and 72 of that regulation.

10 Under paragraphs 2 and 4 of Article 12a of Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), as amended by Commission Regulation (EC) No 311/2007 of 19 March 2007 (OJ 2007 OJ L 82, p.6), the authorities of the competent State, within the meaning of Regulation No 1408/71, are required to issue to a person who is normally employed in the territory of two or more Member States, within the meaning of Article 14(2)(b) of that last regulation, a certificate stating that that person is subject to the legislation of that competent State.

11 That certificate, the model for which was provided for under Decision No 202 of the

Administrative Commission of the European Communities on Social Security for Migrant Workers of 17 March 2005 on model forms necessary for the application of Council Regulations (EEC) No 1408/71 and (EEC) No 574/72 (E 001, E 101, E 102, E 103, E 104, E 106, E 107, E 108, E 109, E 112, E 115, E 116, E 117, E 118, E 120, E 121, E 123, E 124, E 125, E 126 and E 127) (OJ 2006 L 77, p. 1), is generally known as an ‘E 101 form’ or an ‘E 101 certificate’.

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

12 According to the order for reference, Format, which has its registered office in Warsaw (Poland), is a subcontracting construction company operating in certain Member States. In 2008, Format was involved in 15 to 18 building projects being carried out in five or six Member States at the same time. Format employed staff recruited in Poland, but posted them to building projects under way in the various Member States, depending upon the requirements of the company and the nature of the work to be carried out.

13 An employee who was to be posted to another building site was given instructions to go there. When a construction contract came to an end and there was no work for that employee, he would go back to Poland and was either given unpaid leave or his contract of employment was terminated. In principle, the employee was to perform his duties in the countries of the European Union.

14 According to the findings of the referring court, during the periods at issue in the main proceedings, Mr Kita’s place of ‘residence’, within the meaning of Article 1(h) of Regulation No 1408/71, remained in Poland.

15 On three occasions, Mr Kita was employed full-time by Format on the basis of fixed-term contracts of employment.

16 The first contract was concluded for the period from 17 July 2006 to 31 January 2007, extended by an addendum until 22 December 2007. That contract came to an end however on 30 November 2006. It defined the place of employment as being ‘operations and building sites in Poland and within the territory of the European Union (Ireland, France, Great Britain, Germany, Finland), as instructed by the employer’. Mr Kita worked under that contract solely in France. In application of Article 14(2)(b) of Regulation No 1408/71, the ZUS issued Mr Kita with an E 101 certificate concerning the legislation applicable for the period from 17 July 2006 to 22 December 2007. Following termination of the contract on 30 November 2006, the certificate was amended so as to apply to the period from 17 July to 30 November 2006.

17 The second contract was entered into for the period from 4 January 2007 until 21 December 2008. The place of employment was defined in identical terms to those of the first contract. Under the second contract, Mr Kita performed work in France. Under the same provisions as for the first contract, the ZUS issued him with an E 101 certificate concerning the period from 4 January 2007 to 21 December 2008. From 22 August 2007 to 31 December 2007, Mr Kita was unable to work due to illness and the contract terminated on 5 April 2008. Consequently, the ZUS amended the E 101 certificate so that it applied from 4 January to 22 August 2007.

18 By decision of 23 July 2008 addressed to Format and Mr Kita (‘the contested decision’), the ZUS — on the basis of Polish law and of Article 14(1)(a) and 14(2)(b) of Regulation No 1408/71 — refused to issue an E 101 certificate regarding the legislation applicable confirming that, during the periods between 1 January 2008 and 21 December 2008 and between 1 January 2008 and 31 December 2009, Mr Kita came within the Polish social security regime. According to that decision, Mr Kita was not a ‘person normally employed in the territory of two or more Member States’ within the meaning of Article 14(2)(b) of Regulation No 1408/71, but an employee posted by reference to

the employer’s situation.

19 On 24 July 2008, thus after the adoption of the contested decision, a third contract was concluded for the period from 30 July 2008 to 31 December 2012. The place of employment was stated to be the same as under the two previous contracts. However, an addendum to the contract of 24 July 2008 stated that the place of employment was to be the nuclear power station in Olkiluoto in Finland. After working in Finland, Mr Kita was granted unpaid leave from 1 November 2008 to 30 September 2009. The employment contract was terminated by agreement between the parties on 16 March 2009.

20 By judgment of 12 February 2009 the S?d Okr?gowy — S?d Ubezpiecze? Spo?ecznych w Warszawie (Regional Court — Social Security Court Warsaw) dismissed the action brought by Format against the decision at issue, on the grounds that the preconditions for assuming that the worker had been posted pursuant to Article 14(1)(a) of Regulation No 1408/71 were not satisfied in so far as Format did not carry on its activity essentially in the State in which it had its registered office. That court also found that Mr Kita was not normally employed in the territory of two or more Member States but that, over a period of several or more than 10 months, he had continually worked in the territory of a single Member State (in France and then in Finland), and that, consequently, the general coordination rule applied to him, according to which the legislation applicable is determined by reference to the principle of the place at which the work is performed.

21 Format and Mr Kita appealed to the referring court against the judgment of 12 February 2009.

22 Format argues that the system under which its employees work is that provided for under Article 14(2)(b)(ii) of Regulation No 1408/71, which does not require simultaneous activities in two or more Member States, and does not make reference to any computation periods or to the frequency with which an employee changes locations or crosses borders.

23 Mr Kita shares Format’s view, maintaining in his appeal that his situation complies with Article 14(2)(b)(ii) of Regulation No 1408/71 since he has already been ‘normally employed in the territory of more than two Member States’ in the course of his employment relationship with Format, that is to say, under contracts which have been concluded for work having to be performed on the territory of six Member States, albeit performed, until now, in the territory of only two of those States (in France and in Finland). Moreover, if Mr Kita had to move to a building site in Poland, Article 14(2)(b)(i) of that regulation would also be applicable.

24 The referring court views as ambiguous the expression ‘a person normally employed in the territory of two or more Member States’ in Article 14(2)(b) of Regulation No 1408/71.

25 In those circumstances, the S?d Apelacyjny — S?d Pracy i Ubezpiecze? Spo?ecznych w Warszawie decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

‘1. Does the fact that the personal scope of Article 14(2) of Regulation [No 1408/71] covers “a person normally employed in the territory of two or more Member States” — in respect of whom it is specified in Article 14(2)(b) that this is a person other than that referred to in Article 14(2)(a) — mean, in the case of an employed person who is employed in an employment relationship by a single employer:

(a) that he is to be considered such a person if, on account of the nature of the employment, he performs work in different Member States at the same time (simultaneously), which also includes relatively short periods of time, and therefore frequently crosses State borders,

and also

(b) that he is to be considered such a person too if in the context of a single employment relationship he is obliged to perform work permanently (normally) in several Member States, including the State in which he resides, or in several Member States other than that of his State of residence

either irrespective of the length of the consecutive periods in which he performs his obligations in the individual Member States and the length of the intermissions between them, or with a temporal limit?

(2) If the interpretation set out in [point] (b) above is accepted, can Article 14(2)(b)(ii) of Regulation No 1408/71 be applied in a situation in which the obligation existing in the context of the employment relationship between the employee and a single employer to permanently perform work in several Member States covers performance of obligations in the Member State in which the employee resides even though such a situation — the performance of work in that very State — appears to be precluded at the time that the employment relationship is entered into and, in the event of the answer being in the negative, can Article 14(2)(b)(i) of Regulation No 1408/71 be applied?'

Consideration of the questions referred

Admissibility

26 According to the Belgian Government, the dispute in the main proceedings concerns an employed person who, under successive contracts, provided his services in a single Member State, namely in France, then in Finland. To accept the premiss giving rise to the questions referred for a preliminary ruling would lead to no longer differentiating between a posted worker within the meaning of Regulation No 1408/71 and a worker normally employed in the territory of two or more Member States within the meaning of that same regulation. To consider, retrospectively, that a worker who was the subject of several postings by his employer in actual fact performed 'alternate' work in several States might give rise to legal uncertainty for the workers and the employers concerned as well as for the competent institutions called upon to rule on those situations. The Belgian Government claims that the questions referred should be declared inadmissible.

27 Those arguments of the Belgian Government concern, in actual fact, not the admissibility of the request for a preliminary ruling, but its substance. The preliminary ruling cannot therefore be held inadmissible on those grounds.

Substance

28 By its two questions, which should be examined together, the referring court asks, in essence, whether Article 14(2)(b) of Regulation No 1408/71 must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, a person who, under successive employment contracts stating the place of employment to be the territory of several Member States, in fact works during the term of each of those contracts only on the territory of one of those States at a time, can fall within the concept of 'a person normally employed in the territory of two or

more Member States', within the meaning of that provision, and if, in the event of that question being answered in the affirmative, the situation of such a person falls within Article 14 (2)(b)(i) or (ii).

29 In that regard, it should be noted that the provisions of Title II of Regulation No 1408/71, which includes Article 14(2), constitute, according to settled case-law, a complete and uniform system of conflict rules the aim of which is to ensure that workers moving within the European Union are subject to the social security scheme of only one Member State, in order to prevent the national legislation of more than one Member State from being applicable and to avoid the attendant complications of such a situation (see, to that effect, in particular, Case 276/81 *Kuijpers* [1982] ECR 3027, paragraph 10; Case C-202/97 *FTS* [2000] ECR I-883, paragraph 20 and the case-law cited; as well as Case C-404/98 *Plum* [2000] ECR I-9379, paragraph 18).

30 In order to achieve that aim, Article 13(2)(a) of Regulation No 1408/71 lays down the principle that an employed person is to be subject, with regard to social security matters, to the legislation of the Member State in which he works (see Case 101/83 *Brusse* [1984] ECR 2223, paragraph 15).

31 Nevertheless, that principle is stated to be 'subject to the provisions of Articles 14 to 17' of Regulation No 1408/71. However, in certain specific situations the unrestricted application of the rule set out in Article 13(2)(a) of that regulation might in fact create, instead of prevent, administrative complications for workers as well as for employers and social security authorities, which would place obstacles in the way of the freedom of movement of the persons covered by that regulation (see, to that effect, *Brusse*, paragraph 16). Special rules governing such situations are set out, in particular, in Article 14 of Regulation No 1408/71.

32 It is apparent from the file that the referring court starts from the premiss that Article 14(1)(a) of Regulation No 1408/71 relating to the temporary posting of workers does not apply to Mr Kita's situation, on the ground that Format, the company which employs him, does not usually carry out significant activities in Poland, the Member State in which it is established, as required by a correct application of that provision (see, to that effect, Case 35/70 *Manpower* [1970] ECR 1251, paragraph 16, *FTS*, paragraphs 23 and 45; and *Plum*, paragraph 22). That premiss has not been disputed before the Court of Justice.

33 Moreover, as the referring court points out, in essence, and as follows from Article 14(2)(a) of Regulation No 1408/71, a person who normally is employed more or less simultaneously or concurrently on the territory of more than one Member State may fall within the concept of 'a person normally employed in the territory of two or more Member States' within the meaning of Article 14(2) (see, by analogy, Case C-425/93 *Calle Grenzshop Andresen* [1995] ECR I-269, paragraph 15).

34 It is common ground that such a situation does not, in reality, correspond to the situation at issue in the main proceedings, notwithstanding the terms of the contracts referred to in paragraphs 16, 17 and 19 of the present judgment.

35 In those circumstances, the referring court is uncertain whether the concept of 'a person normally employed in the territory of two or more Member States', within the meaning of Article 14(2)(a) of Regulation No 1408/71, refers not only to employees who work concurrently in the territory of more than one Member State, but also to those who, at least under the terms of their employment contract, are required to perform their work in several Member States, without that work having to be carried out in several Member States at the same time or almost simultaneously.

36 In that respect, the referring court points out that, as regards any successive periods of work performed in the territory of more than one Member State, Article 14(2) of Regulation No 1408/71 does not establish any time limits.

37 On that point, the European Commission considers it possible, in the light of Article 14(1)(a) of that regulation, to recognise a period of 12 months as being an upper limit. On the other hand, the ZUS and the German Government submit, in essence, that successive periods of work can fall within Article 14(2) of that regulation only if none of them exceeds one month. For its part, the Polish Government considers that, in the absence of criteria by which to distinguish cases governed by Article 14(2)(b) of Regulation No 1408/71 from those in which it is necessary to apply Article 13(2)(a) of that regulation, a broad interpretation of the concept of 'a person normally employed in the territory of two or more Member States' is impossible from the point of view of the practical application of that regulation. According to Format, in any event, when it is difficult to determine the place at which the employment in question is performed, it is necessary to favour the criterion of the place of residence of the employed person, in particular, in order to avoid various difficulties of an administrative nature resulting from frequent changes to the social insurance scheme.

38 However, in order to provide a useful answer to the referring court, it is not necessary to rule on that issue.

39 As the Commission has pointed out, in any event, to fall within Article 14(2) of Regulation No 1408/71, a person must 'normally' be employed in the territory of two or more Member States.

40 It follows that, if employment in the territory of a single Member State constitutes the normal arrangement for the person concerned, such employment cannot fall within the scope of Article 14(2).

41 In those circumstances, in order to provide a useful answer to the referring court, it is necessary to take account of the existence, in the case in the main proceedings, of a divergence between, on one hand, the employment contracts at issue in those proceedings and the places of employment which they stipulate — on the basis of which Format requested an E 101 certificate to be issued — and, on the other, the way in which the obligations were performed in practice under those contracts.

42 In that regard, it should be noted that the issuing institution of an E 101 certificate is required to carry out a proper assessment of the facts relevant for the application of the rules relating to the determination of the legislation applicable in the matter of social security and, consequently, to ensure the correctness of the information contained in that certificate (see, to that effect, *FTS*, paragraph 51, and Case C-178/97 *Banks and Others* [2000] ECR I-2005, paragraph 38).

43 Since the E 101 certificate tends to be issued, as a general rule, before or at the start of the period which it covers, the assessment of the abovementioned facts is most often carried out at that time, on the basis of the anticipated employment situation of the employed person concerned. That is why the description of the nature of the work as evidenced by the contractual documents is of particular importance, in practice, for the purposes of that assessment.

44 With that in mind, it is necessary to have regard, in particular, to the nature of the work as defined in the contractual documents, in order to determine whether the foreseeable activities amount to employed activities covering, on more than a merely once-off basis, the territory of several Member States, provided, however, that the terms of those documents are consistent with the foreseeable activities concerned at the time of the request for the E 101 certificate, or, as the

case may be, with the actual work performed before or after such a request.

45 When assessing the facts with a view to determining the social security legislation applicable for the purposes of issuing an E 101 certificate, the institution concerned may where appropriate take account not only of the wording of contractual documents, but also of factors such as the way in which employment contracts between the employer and the worker concerned had previously been implemented in practice, the circumstances surrounding the conclusion of those contracts and, more generally, the characteristics and conditions of the work performed by the company concerned, in so far as those factors may throw light on the actual nature of the work in question.

46 If it is apparent from relevant factors other than contractual documents that an employed person's situation in fact differs from that described in such documents, the obligation mentioned in paragraph 42 of the present judgment to apply Regulation No 1408/71 correctly means that it is incumbent on the institution concerned, whatever the wording of those contractual documents, to base its findings on the employed person's actual situation and, where appropriate, to refuse to issue the E 101 certificate.

47 Moreover, it is apparent from the case-law that it is incumbent on the institution which has already issued an E 101 certificate to reconsider the grounds for its issue and, if necessary, withdraw the certificate if the competent institution of a Member State in which the employed person carries out work expresses doubts as to the correctness of the facts on which the certificate is based and/or as to compliance with the requirements of Title II of Regulation No 1408/71 (see, by analogy, in the context of Article 14(1) of Regulation No 1408/71, *FTS*, paragraph 56, and *Banks and Others*, paragraph 43).

48 In the contracts at issue in the main proceedings, referred to in paragraphs 16 and 17 of this judgment, the place of employment was described as being 'operations and building sites in Poland and within the territory of the European Union (Ireland, France, Great Britain, Germany, Finland), as instructed by the employer.' However, as is apparent from the undisputed information provided to the Court of Justice by the referring court, by Format and by the ZUS, under those contracts, Mr Kita performed work continuously for several months or more than 10 months in the territory of a single Member State, namely, France. Moreover, under the next employment contract, concluded again between Format and Mr Kita for a fixed period, Mr Kita worked in Finland only. It is apparent from the documents before the Court that, under each of those three contracts, when the work was finished, Mr Kita obtained unpaid leave and that, by agreement of the parties, the contract concerned was then terminated early.

49 In such circumstances, account being taken of paragraphs 39 and 40 of the present judgment, it cannot validly be maintained that an employed person in a situation such as Mr Kita's can fall within the concept of 'a person normally employed in the territory of two or more Member States' within the meaning of Article 14(2) of Regulation No 1408/71.

50 On the other hand, in such circumstances, the principle set out in Article 13(2)(a) of Regulation No 1408/71 could apply, as well as, where necessary, during the periods of interruption between the employment contracts, the principle set out in Article 13(2)(f).

51 It is for the referring court to draw the appropriate inferences from paragraphs 49 and 50 of the present judgment in the context of the dispute in the main proceedings.

52 In the light of the foregoing, the answer to the questions referred is that Article 14(2)(b) of Regulation No 1408/71 must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, a person who, under successive employment contracts stating the

place of employment to be the territory of several Member States, in fact works during the term of each of those contracts only on the territory of one of those States at a time, cannot fall within the concept of ‘a person normally employed in the territory of two or more Member States’, within the meaning of that provision.

Costs

53 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 (Second Chamber) hereby rules:

Article 14(2)(b) 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 and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006, must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, a person who, under successive employment contracts stating the place of employment to be the territory of several Member States, in fact works during the term of each of those contracts only on the territory of one of those States at a time, cannot fall within the concept of ‘a person normally employed in the territory of two or more Member States’, within the meaning of that provision.

[Signatures]

* Language of the case: Polish.