Provisional text

JUDGMENT OF THE COURT (First Chamber)

27 April 2017 (*)

(Reference for a preliminary ruling — Migrant workers — Social security — Legislation applicable — Regulation (EEC) No 1408/71 — Article 14(2)(a) — Regulation (EEC) No 574/72 — Article 12a(1a) — Agreement between the European Community and the Swiss Confederation — Travelling personnel — Workers posted to another Member State — Swiss branch — E 101 certificate — Probative value)

In Case C?620/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (France), made by decision of 6 November 2015, received at the Court on 23 November 2015, in the proceedings

A-Rosa Flussschiff GmbH

v

Union de recouvrement des cotisations de sécurité sociale et d'allocations familiales (Urssaf) d'Alsace, successor in law to the Urssaf du Bas-Rhin,

Sozialversicherungsanstalt des Kantons Graubünden,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, E. Regan, A. Arabadjiev, C.G. Fernlund and S. Rodin, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 5 October 2016,

after considering the observations submitted on behalf of:

– A-Rosa Flussschiff GmbH, by M. Schlingmann, Rechtsanwalt,

– the Union de recouvrement des cotisations de sécurité sociale et d'allocations familiales (Urssaf) d'Alsace, successor in law to the Urssaf du Bas-Rhin, by J.-J. Gatineau, avocat,

– the French Government, by D. Colas and C. David, acting as Agents,

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

– the Czech Government, by M. Smolek and J. Vlá?il, acting as Agents,

– Ireland, by G. Hodge, E. Creedon and A. Joyce, acting as Agents, and by N. Donnelly, adviser,

– the Cypriot Government, by N. Ioannou, acting as Agent,

– the European Commission, by D. Martin, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 12 January 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 14(2)(a) 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, and of Article 12a(1a) of Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation No 1408/71, 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 647/2005 of the European Parliament and of the Council of 13 April 2005 (OJ 2005 L 117, p. 1) (‘Regulation No 1408/71’ and ‘Regulation No 574/72’, respectively).

2 The request has been made in proceedings between A-Rosa Flussschiff GmbH (‘A-Rosa’) and the Union de recouvrement des cotisations de sécurité sociale et d’allocations familiales (URSSAF) d’Alsace, successor in law to the Urssaf du Bas-Rhin (France), on the one hand, and the Sozialversicherungsanstalt des Kantons Graubünden (Social Insurance Office for the Canton of Grisons, Switzerland) (‘the Swiss Social Insurance Office’), on the other, concerning a recovery notice sent to A-Rosa by the URSSAF for non-payment of contributions to the French social security system for the period from 1 April 2005 to 30 September 2007.

Legal context

EU law

Regulation No 1408/71

3 Articles 13 to 17a of Regulation No 1408/71 were set out in Title II thereof, headed ‘Determination of the legislation applicable’.

4 After laying down, in the first paragraph thereof, the rule that, in principle, persons to whom the regulation applies are to be subject to the legislation of a single Member State only, Article 13 of that regulation provided:

‘2. Subject to Articles 14 to 17:

(a) a person employed in the territory of one Member State shall be subject to the legislation of that State even if he resides in the territory of another Member State or if the registered office or place of business of the undertaking or individual employing him is situated in the territory of another Member State;

...’

5 Under the heading ‘Special rules applicable to persons, other than mariners, engaged in

paid employment', Article 14 of that regulation provided:

'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 a 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:

(i) where the said undertaking has a branch or permanent representation in the territory of a Member State other than that in which it has its registered office or place of business, a person employed by such branch or permanent representation shall be subject to the legislation of the Member State in whose territory such branch or permanent representation is situated;

...'

6 According to Article 80(1) of that regulation:

'There shall be attached to the Commission an Administrative Commission on Social Security for Migrant Workers (hereinafter called "the Administrative Commission") made up of a government representative of each of the Member States, assisted, where necessary, by expert advisers ...'

7 Under Article 81(a) of Regulation No 1408/71, the Administrative Commission is to be responsible for dealing with, inter alia, all administrative questions and questions of interpretation arising from the provisions of that regulation.

8 Article 84a(3) of that regulation provided:

'In the event of difficulties in the interpretation or application of this Regulation which could jeopardise the rights of a person covered by it, the institution of the competent State or of the State of residence of the person involved shall contact the institution(s) of the Member State(s) concerned. If a solution cannot be found within a reasonable period, the authorities concerned may call on the Administrative Commission to intervene.'

9 Regulation No 1408/71 was repealed and replaced with effect from 1 May 2010 by Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1).

Regulation No 574/72

10 Under the heading 'Implementation of the provisions of the regulation for determining the legislation applicable', Title III of Regulation No 574/72 laid down detailed rules for the application

of Articles 13 to 17 of Regulation No 1408/71.

11 In particular, Article 12a(1a) of Regulation No 574/72 provided that the institution designated by the competent authority of the Member State whose legislation remains applicable pursuant to Article 14(2)(a) of Regulation No 1408/71 was required to issue a certificate, known as an ‘E 101 certificate’, stating that the worker concerned was subject to the legislation of that Member State.

12 Regulation No 574/72 was repealed and replaced with effect from 1 May 2010 by Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation No 883/2004 (OJ 2009 L 284, p. 1).

Decision No 181 of the Administrative Commission of 13 December 2000

13 Pursuant to Article 81(a) of Regulation No 1408/71, the Administrative Commission adopted Decision No 181 of 13 December 2000 concerning the interpretation of Articles 14(1), 14a(1) and 14b(1) and (2) of Regulation No 1408/71 (OJ 2001 L 329, p. 73).

14 Point 6 of that decision states that ‘form E 101 should preferably be issued before the beginning of the period concerned; it may, however, be issued during this period or even after it has expired, in which case it may have retroactive effect’.

15 Point 7 of that decision is worded as follows:

‘The duty to cooperate referred to in point 5(d) of this Decision also requires:

(a) that the competent institution in the sending State carry out a proper assessment of the facts relevant for the application of Articles 14(1), 14a(1) and 14b(1) and (2) of Regulation [No 1408/71] and Articles 11 and 11a of Regulation [No 574/72] and consequently guarantees that the information contained in form E 101 is complete;

(b) that the competent institution of the State of employment and of any other Member State regard themselves as bound by the E 101 form as long as it is not withdrawn or declared invalid by the competent institution of the sending State;

(c) that the competent institution in the sending State reconsider the grounds for the issue of this form and, if necessary, withdraw the certificate if the institution in the State of employment expresses doubts as to the correctness of the facts on which the form is based.’

16 Point 9 of that decision provides:

‘Where the competent institutions fail to reach an agreement, they may submit to the Administrative Commission, through their government representative, a note which will be examined at the first meeting following the 20th day after its submission with a view to reconciling the opposing views on the legislation applicable to the case.’

The EC-Switzerland Agreement

17 Article 8 of the Agreement on the Free Movement of Persons between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, signed in Luxembourg on 21 June 1999 and approved on behalf of the European Community by Decision 2002/309/EC, Euratom of the Council and of the Commission as regards the Agreement on Scientific and Technological Cooperation of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation (OJ 2002 L 114, p. 1) ('the EC-Switzerland Agreement'), provides:

'The Contracting Parties shall make provision, in accordance with Annex II, for the coordination of social security systems ...'

18 Annex II to the EC-Switzerland Agreement, concerning the coordination of social security schemes, provided in Article 1 thereof:

'1. The contracting parties agree, with regard to the coordination of social security schemes, to apply among themselves the Community acts to which reference is made, as in force at the date of signature of the Agreement and as amended by section A of this Annex, or rules equivalent to such acts.

2. The term "Member State(s)" contained in the acts referred to in section A of this Annex shall be understood to include Switzerland in addition to the States covered by the relevant Community acts.'

19 Section A of that annex referred, inter alia, to Regulations Nos 1408/71 and 574/72.

20 By Decision No 1/2012 of the Joint Committee established under the EC-Switzerland Agreement of 31 March 2012 replacing Annex II to that Agreement on the coordination of social security schemes (OJ 2012 L 103, p. 51), which entered into force on 1 April 2012, section A of that annex was updated and now refers to Regulations Nos 883/2004 and 987/2009.

21 However, events preceding the entry into force of that decision, such as those relating to the dispute in the main proceedings, remain governed by Regulations Nos 1408/71 and 574/72, pursuant to points 3 and 4 of section A of Annex II to the EC-Switzerland Agreement, as amended by Decision No 1/2012, which continues to refer to Regulations Nos 1408/71 and 574/72 'when cases are concerned which occurred in the past'.

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

22 A-Rosa, which has its registered office in Germany, operates, inter alia, two cruise ships sailing on the Rhône (France) and the Saône (France), on board which are employed, respectively, 45 and 46 seasonal workers, who are nationals of Member States other than France and who perform hotel-related activities. Both ships sail exclusively on French inland waterways.

23 A-Rosa has a branch located in Switzerland which handles everything relating to the ships' activities, management, administration, and human resources, that is, the staff employed on board those ships. In that regard, all the employment contracts of the seasonal workers referred to above are subject to Swiss law.

24 Following an inspection of the two ships carried out on 7 June 2007, the URSSAF found irregularities concerning the insurance cover of the employees performing hotel-related activities. That finding gave rise to a recovery notice, sent to A-Rosa on 22 October 2007, for an amount of EUR 2 024 123 in respect of arrears of social security contributions to the French social security system for the period from 1 April 2005 to 30 September 2007.

25 During those inspections, A-Rosa provided an initial batch of E 101 certificates, for the year 2007, issued by the Swiss Social Insurance Office pursuant to Article 14(2)(a) of Regulation No 1408/71.

26 A-Rosa challenged the recovery notice before the tribunal des affaires de sécurité sociale du Bas-Rhin (Social Security Court, Bas-Rhin, France). That action was dismissed by decision of 9 February 2011. The tribunal des affaires de sécurité sociale du Bas-Rhin considered that A-Rosa's activities were entirely geared towards the territory of France and that those activities were carried out in France on a habitual, stable and continuous basis, so that A-Rosa could not rely on Article 14(1) of Regulation No 1408/71, which it had invoked in its action, because that provision governs the specific situation of workers who are posted to the territory of another Member State.

27 A-Rosa lodged an appeal against that judgment before the cour d'appel de Colmar (Court of Appeal, Colmar, France).

28 By letter of 27 May 2011, the URSSAF submitted a request for withdrawal of the E 101 certificates to the Swiss Social Insurance Office, noting, inter alia, that those forms should not have been drawn up on the basis of Article 14(2)(a) of Regulation No 1408/71, given that the activities of the ships in question were carried out on a permanent and exclusive basis in France, so that periodic declarations concerning the employees recruited specifically for posting on board those ships should have been made to the French social security authorities.

29 By letter of 18 August 2011, the Swiss Social Insurance Office responded to that request, stating, inter alia, that it had required A-Rosa to deduct social security contributions in accordance with the law of that country for persons actually working in only one Member State of the European Union, and asking the URSSAF, in view of the fact that, as regards the year 2007, all the social security contributions for those persons had been deducted and paid in Switzerland, to abandon any retrospective correction making those persons subject to the French social security system.

30 During the appeal proceedings, A-Rosa provided a second batch of E 101 certificates, for the years 2005 and 2006, also issued by the Swiss Social Insurance Office pursuant to Article 14(2)(a) of Regulation No 1408/71.

31 The appeal lodged by A-Rosa was dismissed, for the most part, by judgment of the cour d'appel de Colmar of 12 September 2013. In that regard, although that company claimed that it was relying on the E 101 certificates it had produced, the cour d'appel de Colmar, having noted that those certificates had been issued not pursuant to Article 14(1)(a) of Regulation No 1408/71, on which A-Rosa claimed to be relying, but pursuant to Article 14(2)(a) of that regulation, and that the certificates had been provided by A-Rosa in two batches (the first during the inspection by the URSSAF and the second after the decision of the tribunal des affaires de sécurité sociale du Bas-Rhin), found that the employees whose remuneration was the subject of the recovery notice worked solely in the territory of France, so that A-Rosa had not provided evidence of any exceptions enabling it to avoid the principle of territoriality laid down in Article 13(2)(a) of Regulation No 1408/71.

32 A-Rosa appealed against that judgment before the referring court, the Cour de cassation

(Court of Cassation, France). That court, on the basis of the findings made by the cour d’appel de Colmar, is uncertain whether the issuing of an E 101 certificate by the competent institution of a Member State pursuant to Article 14(2)(a) of Regulation No 1408/71 has the legal effects usually attaching to such a certificate in the case-law of the Court of Justice, where the conditions under which the employee covered by that certificate works in the territory of another Member State clearly do not fall within the material scope of the exceptions set out in that article.

33 In those circumstances, the Cour de cassation decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is the effect of an E 101 certificate issued, in accordance with Article 11(1) and Article 12a(1a) of Regulation ... No 574/72 ..., by the institution designated by the competent authority of the Member State whose social security legislation remains applicable to the situation of an employee, binding, first, on the institutions and authorities of the host Member State and, secondly, on the courts of that Member State, where it is found that the conditions under which the employee carries out his activities clearly do not fall within the material scope of the exceptions set out in Article 14(1) and (2) of Regulation No 1408/71?’

Consideration of the question referred

34 By its question, the referring court asks, in essence, whether Article 12a(1a) of Regulation No 574/72 is to be interpreted as meaning that an E 101 certificate issued by the institution designated by the competent authority of a Member State pursuant to Article 14(2)(a) of Regulation No 1408/71 is binding on both the social security institutions of the Member State in which the work is carried out and the courts of that Member State, even where it is found by those courts that the conditions under which the worker concerned carries out his activities clearly do not fall within the material scope of that provision of Regulation No 1408/71.

35 As a preliminary point, it should be borne in mind that, in accordance with the Court’s settled case-law, in a reference for a preliminary ruling under Article 267 TFEU, which is based on a clear separation of functions between the national courts and the Court of Justice, the national court alone has jurisdiction to find and assess the facts in the case in the main proceedings. In that context, the Court is only empowered to rule on the interpretation or validity of EU law in the light of the factual and legal situation as described by the referring court, in order to provide that court with such guidance as will assist it in resolving the dispute before it (judgment of 28 July 2016, *Kratzer*, C?423/15, EU:C:2016:604, paragraph 27).

36 Accordingly, the question raised by the referring court, as reworded in paragraph 34 above, must be answered on the basis of the findings made by that court. Thus, that paragraph does not prejudge the issue as to whether the workers concerned fall within the scope of Article 14 of Regulation No 1408/71 or the legislation applicable to those workers.

37 It should be borne in mind that the E 101 certificate is, like the substantive rules in Article 14(2)(a) of Regulation No 1408/71, aimed at facilitating freedom of movement for workers and freedom to provide services (see, by analogy, judgment of 26 January 2006, *Herbosch Kiere*, C?2/05, EU:C:2006:69, paragraph 20 and the case-law cited).

38 On that certificate, the competent institution of the Member State in which an undertaking employing the workers concerned is established declares that its own social security system will remain applicable to those workers. By virtue of the principle that workers must be covered by only one social security system, the certificate thus necessarily implies that the other Member State's social security system cannot apply (judgment of 26 January 2006, *Herbosch Kiere*, C?2/05, EU:C:2006:69, paragraph 21 and the case-law cited).

39 In that regard, it should be noted that the principle of cooperation in good faith, laid down in Article 4(3) TEU, requires the issuing institution to carry out a proper assessment of the facts relevant for the application of the rules relating to the determination of the legislation applicable to social security and, consequently, to ensure that the information contained in an E 101 certificate is correct (judgment of 26 January 2006, *Herbosch Kiere*, C?2/05, EU:C:2006:69, paragraph 22 and the case-law cited).

40 It is also clear from the obligations to cooperate arising from Article 4(3) TEU that those obligations would not be fulfilled — and the aims of Article 14(2)(a) of Regulation No 1408/71 and Article 12a(1a) of Regulation No 574/72 would be thwarted — if the competent institution of the Member State in which the work is carried out were to consider that it was not bound by the E 101 certificate and made such workers subject to its own social security system (see, by analogy, judgment of 30 March 2000, *Banks and Others*, C?178/97, EU:C:2000:169, paragraph 39 and the case-law cited).

41 Consequently, in so far as an E 101 certificate establishes a presumption that the worker concerned is properly affiliated to the social security system of the Member State in which the undertaking employing him is established, it is binding on the competent institution of the Member State in which that person actually works (see, to that effect, judgment of 30 March 2000, *Banks and Others*, C?178/97, EU:C:2000:169, paragraph 40 and the case-law cited).

42 The opposite result would undermine the principle that employees are to be covered by only one social security system, would make it difficult to know which system is applicable and would consequently undermine legal certainty. In cases in which it was difficult to determine the system applicable, each of the competent institutions of the two Member States concerned would be inclined to take the view, to the detriment of the workers concerned, that its own social security system was applicable to those workers (judgment of 26 January 2006, *Herbosch Kiere*, C?2/05, EU:C:2006:69, paragraph 25 and the case-law cited).

43 Consequently, as long as an E 101 certificate is not withdrawn or declared invalid, the competent institution of the Member State in which an employee actually works must take account of the fact that that person is already subject to the social security legislation of the Member State in which the undertaking employing him is established, and that institution cannot therefore subject the worker in question to its own social security system (judgment of 30 March 2000, *Banks and Others*, C?178/97, EU:C:2000:169, paragraph 42 and the case-law cited).

44 However, it is incumbent on the competent institution of the Member State which issued the E 101 certificate to reconsider whether it was properly issued and, if appropriate, to withdraw the certificate if the competent institution of the Member State in which the employee actually works expresses doubts as to the correctness of the facts on which the certificate is based and, consequently, of the information contained therein, in particular because the information does not correspond to the requirements of Article 14(2)(a) of Regulation No 1408/71 (see, by analogy, judgment of 30 March 2000, *Banks and Others*, C?178/97, EU:C:2000:169, paragraph 43 and the case-law cited).

45 In the event that the institutions concerned do not reach an agreement on, in particular, the question how the particular facts of a specific case are to be assessed, and consequently on the question whether it is covered by Article 14(2)(a) of Regulation No 1408/71, it is open to them to refer the matter to the Administrative Commission (see, by analogy, judgment of 26 January 2006, *Herbosch Kiere*, C?2/05, EU:C:2006:69, paragraph 28 and the case-law cited).

46 If the Administrative Commission does not succeed in reconciling the points of view of the competent institutions on the question of the legislation applicable, the Member State in which the employee concerned actually works may, without prejudice to any legal remedies existing in the Member State to which the issuing institution belongs, at least bring infringement proceedings under Article 259 TFEU in order to enable the Court to examine in those proceedings the question of the legislation applicable to such an employee and, consequently, whether the information contained in the E 101 certificate is correct (judgment of 10 February 2000, *FTS*, C?202/97, EU:C:2000:75, paragraph 58).

47 If it were accepted that a competent national institution could, by bringing proceedings before a court of the host Member State of the worker concerned to which that institution belongs, have an E 101 certificate declared invalid, there would be a risk that the system based on cooperation in good faith between the competent institutions of the Member States would be undermined (judgment of 26 January 2006, *Herbosch Kiere*, C?2/05, EU:C:2006:69, paragraph 30).

48 It is clear from the foregoing that, as long as it has not been withdrawn or declared invalid, an E 101 certificate takes effect in the internal legal order of the Member State to which the employee goes in order to work and, therefore, binds the institutions of that Member State (see, to that effect, judgment of 26 January 2006, *Herbosch Kiere*, C?2/05, EU:C:2006:69, paragraph 31).

49 It follows that a court of the host Member State is not entitled to scrutinise the validity of an E 101 certificate in the light of the background against which it was issued (see, to that effect, judgment of 26 January 2006, *Herbosch Kiere*, C?2/05, EU:C:2006:69, paragraph 32).

50 Moreover, the Court has previously held that, since the E 101 certificate is binding on the competent institution of the host Member State, there can be no justification for the person who has recourse to a worker’s services not to act in reliance on that certificate. If he has doubts as to the validity of the certificate, that person must, however, inform the institution in question (judgment of 9 September 2015, *X and van Dijk*, C?72/14 and C?197/14, EU:C:2015:564, paragraph 42 and the case-law cited).

51 Therefore, an E 101 certificate issued by the competent institution of a Member State in accordance with Article 12a(1a) of Regulation No 574/72 when, according to the institutions and courts of the Member State in which the work is carried out, the workers concerned do not fall within the scope of Article 14(2)(a) of Regulation No 1408/71, is equally binding on those institutions and courts and on the person who has recourse to those workers’ services.

52 The foregoing conclusion is in no way altered by the fact that the workers concerned clearly do not fall within the scope of Article 14 of that regulation.

53 Indeed, given that the Court has determined, through its case-law, the procedure to be followed in order to resolve any dispute between the institutions of the Member States concerned as regards the validity or the accuracy of an E 101 certificate, the institutions of those States applying Regulations Nos 1408/71 and 574/72, including the Swiss Confederation pursuant to the EC-Switzerland Agreement, must follow that procedure, even if it were established that the

conditions under which the workers concerned carry out their activities clearly do not fall within the material scope of the provision on the basis of which the E 101 certificate was issued.

54 In that context, the arguments relied on by the French Government and by the URSSAF as regards the ineffectiveness of that procedure and the need to prevent unfair competition and social dumping can in no way justify disregarding that procedure; nor, *a fortiori*, can they justify a decision to disregard an E 101 certificate issued by the competent institution of another Member State.

55 Furthermore, such arguments cannot be regarded as providing sound reasons for altering, in circumstances such as those in the main proceedings, the Court's case-law in that regard.

56 First of all, in the dispute in the main proceedings, it is apparent from the case-file submitted to the Court that the French authorities neither exhausted the channel of dialogue with the Swiss Social Insurance Office nor even attempted to refer the matter to the Administrative Commission, so that the events which gave rise to that dispute cannot be said to disclose supposed deficiencies in the procedure determined by the Court's case-law or show that it is impossible to resolve any instances of unfair competition or social dumping, as noted by the Advocate General in points 75 and 82 of his Opinion.

57 Next, it should be observed that Decision No 181 adhered to the legal principles laid down in the Court's case-law in relation to the E 101 certificate, including the obligation to refer any differences regarding the legislation applicable to the facts on the basis of which an E 101 certificate was issued to the Administrative Commission.

58 Furthermore, the EU legislature makes provision, in Article 84a(3) of Regulation No 1408/71, in the event of difficulties in the interpretation or application of that regulation which could jeopardise the rights of a person covered by the regulation, for, in the first place, dialogue between the competent institutions of the Member States concerned, and, in the second place, recourse to the Administrative Commission.

59 Moreover, Regulation No 987/2009, currently in force, codified the Court's case-law, affirming the binding nature of the E 101 certificate and the exclusive competence of the issuing institution to assess the validity of that certificate, and expressly reproducing the procedure called in question by the French Government and by the URSSAF as a means of resolving disputes concerning both the accuracy of documents drawn up by the competent institution of a Member State and determining the legislation applicable to the worker concerned.

60 Lastly, the fact that, in the present case, the State issuing the E 101 certificates is the Swiss Confederation and that, consequently, no infringement proceedings may be brought against that State, as pointed out by the French Government, has no effect on the binding nature of the E 101 certificates at issue in the main proceedings, as the EC-Switzerland Agreement lays down its own system for resolving disputes between the Contracting Parties, as noted by the Advocate General in point 65 of his Opinion.

61 Having regard to the foregoing, the answer to the question referred is that Article 12a(1a) of Regulation No 574/72 must be interpreted as meaning that an E 101 certificate issued by the institution designated by the competent authority of a Member State pursuant to Article 14(2)(a) of Regulation No 1408/71 is binding on both the social security institutions of the Member State in which the work is carried out and the courts of that Member State, even where it is found by those courts that the conditions under which the worker concerned carries out his activities clearly do not fall within the material scope of that provision of Regulation No 1408/71.

Costs

62 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. 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 12a(1a) of Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing 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 647/2005 of the European Parliament and of the Council of 13 April 2005, must be interpreted as meaning that an E 101 certificate issued by the institution designated by the competent authority of a Member State pursuant to Article 14(2)(a) of Regulation No 1408/71, as amended and updated by Regulation No 118/97, as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005, is binding on both the social security institutions of the Member State in which the work is carried out and the courts of that Member State, even where it is found by those courts that the conditions under which the worker concerned carries out his activities clearly do not fall within the material scope of that provision of Regulation No 1408/71.

[Signatures]

* Language of the case: French.