JUDGMENT OF THE COURT (Grand Chamber)

10 May 2017 (*)

(Reference for a preliminary ruling — Officials of the European Union — Staff Regulations — Compulsory affiliation to the social security scheme of the EU institutions — Real estate income received in a Member State — Liability to pay General Social Contribution, social levy and additional contributions under the law of a Member State — Participating in the funding of the social security scheme of that Member State)

In Case C-690/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour administrative d'appel de Douai (Administrative Court of Appeal, Douai, France), made by decision of 14 December 2015, received at the Court on 21 December 2015, in the proceedings

Wenceslas de Lobkowicz

v

Ministère des Finances et des Comptes publics,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič, L. Bay Larsen, M. Berger and A. Prechal, Presidents of Chambers, C. Toader, M. Safjan, D. Šváby, E. Jarašiūnas, C.G. Fernlund and F. Biltgen (Rapporteur), Judges,

Advocate General: P. Mengozzi,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 18 October 2016,

after considering the observations submitted on behalf of:

– Mr de Lobkowicz, by G. Hannotin, avocat,

– the French Government, by G. de Bergues, D. Colas, R. Coesme and D. Segoin, acting as Agents,

– the European Commission, by D. Martin and G. Gattinara, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 December 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of EU law in order to ascertain

whether there is a principle that the legislation of one single Member State only is to apply, akin to the one laid down in 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 Council Regulation (EC) No 307/1999 of 8 February 1999 (OJ 1999 L 38, p. 1) ('Regulation No 1408/71'), and, subsequently, in 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 and Corrigendum OJ 2004 L 200, p. 1), as interpreted by the Court in its judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123).

2 The request has been made in proceedings between Mr Wenceslas de Lobkowicz, a retired Commission official, and the Ministère des Finances et des Comptes publics (Ministry of Finance and Public Accounts, France) concerning Mr de Lobkowicz's liability to pay contributions and social levies for the years 2008 to 2011, in respect of income from real estate received in France.

Legal context

EU law

3 Article 12 of Protocol (No 7) on the privileges and immunities of the European Union (OJ 2010 C 83, p. 266) ('the Protocol') states as follows:

'Officials and other servants of the Union shall be liable to a tax for the benefit of the Union on salaries, wages and emoluments paid to them by the Union, in accordance with the conditions and procedure laid down by the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned.

They shall be exempt from national taxes on salaries, wages and emoluments paid by the Union.'

4 Under Article 13 of the Protocol:

'In the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Member States of the Union, officials and other servants of the Union who, solely by reason of the performance of their duties in the service of the Union, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Union, shall be considered, both in the country of their actual residence and in the country of domicile for tax purposes, as having maintained their domicile in the latter country …

…'

5 Pursuant to Article 14 of the Protocol:

'The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned, shall lay down the scheme of social security benefits for officials and other servants of the Union.'

6 The Staff Regulations of Officials of the European Union ('the Staff Regulations') and the conditions of employment of other servants of the European Union were established by Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff

Regulations of officials and the conditions of employment of other servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ, English Special Edition 1968 (I), p. 30), as amended by Council Regulation (EC, Euratom) No 1324/2008 of 18 December 2008 (OJ 2008 L 345, p. 17).

7 Article 72 of the Staff Regulations provides:

‘1. An official … [is] insured against sickness up to 80% of the expenditure incurred subject to rules drawn up by agreement between the institutions [of the European Union] after consulting the Staff Regulations Committee …

…

One third of the contribution required to meet such insurance cover shall be charged to the official but so that the amount charged to him shall not exceed 2% of his basic salary.

…’

8 Article 73 of the Staff Regulations is worded as follows:

‘1. An official is, from the date of his entry into the service, insured against the risk of occupational disease or accidents in the manner provided for in rules drawn up by common agreement of the institutions [of the European Union] after consulting the Staff Regulations Committee. He shall contribute to the cost of insuring against non-occupational risks up to 0.1% of his basic salary.

…’

9 Under Article 83 of the Staff Regulations:

‘1. Benefits paid under this pension scheme shall be charged to the budget [of the European Union]. Member States shall jointly guarantee payment of such benefits in accordance with the scale laid down for financing such expenditure.

…

2. Officials shall contribute one third of the cost of this pension scheme. The contribution shall be 10.9% of the official’s basic salary, the weightings provided for in Article 64 not being taken into account. It shall be deducted monthly from the salary of officials …

…’

10 The contribution rate laid down in Article 83(2) of the Staff Regulations is adjusted annually. Thus, on 1 July 2009, 2010 and 2011, years at issue in the main proceedings, the rate was set at 11.3%, 11.6% and 11%, respectively.

11 Article 2(1) of Regulation No 1408/71 states that the regulation is to ‘apply to employed or self-employed persons and to students who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States or who are stateless persons or refugees residing within the territory of one of the Member States, as well as to the members of their families and their survivors’.

12 Article 13(1) of Regulation No 1408/71 provides that ‘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.'

13 Regulation No 1408/71 was repealed from 1 May 2010, which is the date of application of Regulation No 883/2004. However, the wording of Article 2(1) and Article 13(1) of Regulation No 1408/71 is, in essence, identical to that of Article 2(1) and Article 11(1) of Regulation No 883/2004, respectively.

French law

14 Pursuant to Article L. 136-6 of the code de la sécurité sociale (Social Security Code), in the versions applicable to the facts in the main proceedings, natural persons whose domicile for tax purposes is in France for the purposes of Article 4 B of the code général des impôts (General Tax Code) are subject, under Article 1600-0 C of the General Tax Code, which is one of the provisions of that code relating to the '*contribution sociale généralisée perçue au profit de la caisse nationale des allocations familiales, du fonds de solidarité vieillesse et des régimes obligatoires d'assurance maladie*' (general social contribution levied for the benefit of the National Family Allowances Fund, the Old-Age Solidarity Fund and the compulsory sickness insurance schemes) ('CSG'), to a contribution in respect of income from assets that is based on the net amount adopted for the assessment of income tax in respect of, inter alia, income from real estate.

15 In accordance with Article 1600-0 F *bis* of the General Tax Code, in the version applicable to the facts in the main proceedings, the persons concerned are also subject, in accordance with Article L. 245-14 of the Social Security Code, to a 'social levy' whose rate was set at 2% of the income concerned pursuant to Article L. 245-16 of the Social Security Code applicable to the years at issue. Furthermore, according to the code de l'action sociale et des familles (Social Action and Families Code), an additional contribution (a) at the rate of 0.3% pursuant to Article L. 14-10-4 of the code and (b) at the rate of 1.1% pursuant to Article L. 262-24 of the code is also based on that income.

The facts of the main action and the question referred for a preliminary ruling

16 Mr de Lobkowicz, a French national, was a Commission official from 1979 until his retirement on 1 January 2016. As such, he is subject to the joint social security scheme of the EU institutions.

17 Pursuant to Article 13 of the Protocol, Mr de Lobkowicz's domicile for tax purposes is in France. He receives income from real estate in that Member State. For the years 2008 to 2011, that income was made subject to CSG, the *contribution pour le remboursement de la dette sociale* (social debt repayment contribution) ('CRDS'), the social levy of 2% and the contributions additional to that levy at the rates of 0.3% and 1.1%, respectively.

18 Following the refusal of the tax authorities to grant his application for exemption from the abovementioned contributions and levies, Mr de Lobkowicz brought an action before the tribunal administratif de Rouen (Administrative Court, Rouen, France) seeking exemption from those payments.

19 By judgment of 13 December 2013, the tribunal administratif de Rouen (Administrative Court, Rouen) held that there was no need to adjudicate as regards the relief granted in the course of the proceedings in respect of all the CRDS contributions which Mr de Lobkowicz had been required to pay in each of the years at issue and dismissed the remainder of his claims.

20 Mr de Lobkowicz has appealed against that judgment before the cour administrative d'appel de Douai (Administrative Court of Appeal, Douai). He asks that court, primarily, to declare that he is exempt from the social levies still at issue.

21 The referring court notes, first of all, that the contributions and levies in question constitute ‘taxes’ under national law, so that the fact that Mr de Lobkowicz or the members of his family do not receive any direct benefit in return for payment of those contributions and levies is irrelevant for the purpose of determining whether they are justified.

22 The referring court then states that it is clear from the judgment of the Court of Justice of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123), that tax levies on income from assets with a direct and relevant link with some of the branches of social security listed in Article 4 of Regulation No 1408/71, namely CSG, the social levy of 2% and the additional contribution of 0.3%, fall within the scope of the regulation. On the same grounds as those established by the Court of Justice in that judgment, the referring court finds that the additional contribution at the rate of 1.1% must also be regarded as falling within the scope of the regulation.

23 However, the referring court recalls that the Court of Justice has already held, in paragraph 41 of its judgment of 3 October 2000, *Ferlini* (C-411/98, EU:C:2000:530), that EU officials and the members of their families, for whom affiliation to the social security scheme of the EU institutions is compulsory, cannot be characterised as workers within the meaning of Regulation No 1408/71. Therefore, according to the referring court, the principle that the legislation of a single Member State only is applicable, which is enshrined in Article 13 of the regulation, does not apply to them.

24 Lastly, the referring court states that even if EU officials have the status of worker within the meaning of Article 45 TFEU, that article does not lay down any general rules governing the allocation of competences between the Member States and the EU institutions regarding the funding of social security benefits or special non-contributory benefits to suggest, as Mr de Lobkowicz does, that the obligation he is under to pay the contributions and levies at issue should be characterised as a ‘discriminatory measure’ for the purposes of that article.

25 Taking the view, however, that there is still some doubt as to whether the obligation Mr de Lobkowicz is under to pay the contributions and levies at issue is compatible with EU law, the cour administrative d’appel de Douai (Administrative Court of Appeal, Douai) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is there any principle of EU law which precludes an official of the European Commission from being subject to the *contribution sociale généralisée* (general social contribution), the social levy and contributions additional to that levy at the rates of 0.3% and 1.1% in respect of income from real estate received in a Member State of the European Union?’

Consideration of the question referred

Admissibility

26 The French Government submits, primarily, that the request for a preliminary ruling is inadmissible on the ground that it does not provide the Court with the factual material necessary to enable the Court to give a useful answer to the question put to it. According to the French Government, the referring court asked a question which concerns Article 45 TFEU without specifying, however, either the nationality of the applicant in the main proceedings or whether he has made use of his right of free movement in the pursuit of professional activity.

27 In that regard, it should be borne in mind that the Court of Justice may refuse to rule on a request made by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to

give a useful answer to the questions submitted to it (see, inter alia, judgments of 22 June 2010, *Melki and Abdeli*, C-188/10 and C-189/10, EU:C:2010:363, paragraph 27 and the case-law cited, and of 18 April 2013, *Mulders*, C-548/11, EU:C:2013:249, paragraph 27).

28 The need to provide an interpretation of EU law which will be of use to the referring court, as made clear by Article 94 of the Rules of Procedure of the Court of Justice, requires that court to define the factual and legislative context of the questions it is asking or, at the very least, to explain the factual circumstances on which those questions are based (judgments of 11 March 2010, *Attanasio Group*, C-384/08, EU:C:2010:133, paragraph 32, and of 5 December 2013, *Zentralbetriebsrat der gemeinnützigen Salzburger Landeskliniken*, C-514/12, EU:C:2013:799, paragraph 17).

29 In the present case, it must be pointed out that the question submitted by the referring court undoubtedly concerns the interpretation of EU law. In that respect, it should be noted that, contrary to the French Government's assertions, the question does not expressly concern Article 45 TFEU but refers, in general terms, to the existence of 'any principle of EU law' which may preclude an EU official from being subject to social levies and contributions, such as those at issue in the main proceedings, in respect of income from real estate received in the Member State of his domicile for tax purposes.

30 Furthermore, the order for reference contains a summary of the subject-matter of the main action, as is apparent from paragraphs 17 to 20 of the present judgment, which reproduce the facts as stated by the referring court. The referring court also recalls the tenor of the relevant national provisions and states the reasons which prompted it to inquire about the interpretation of EU law, with reference to the relevant case-law of the Court and, in particular, to its judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123).

31 Therefore, it must be held that the order for reference contains the factual and legal material necessary to enable the Court to give a useful answer to the referring court.

32 In those circumstances, the request for a preliminary ruling is admissible.

Substance

33 By its question, the referring court asks, in essence, whether the principle that the legislation of a single Member State only is to apply in matters of social security, as set out in Regulation No 1408/71 and, subsequently, in Regulation No 883/2004, and as specified in the judgment of the Court of Justice of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123), must be interpreted as meaning that it precludes national legislation, such as that at issue in the main proceedings, which provides that income from real estate received in a Member State by an EU official who has his or her domicile for tax purposes in that Member State is subject to contributions and social levies that are allocated for the funding of the social security scheme of that same Member State.

34 It should be borne in mind, first of all, that, although Member States retain the power to organise their social security schemes, they must nonetheless, when exercising that power, observe EU law (judgments of 1 April 2008, *Government of the French Community and Walloon Government*, C-212/06, EU:C:2008:178, paragraph 43; of 21 January 2016, *Commission* v *Cyprus*, C-515/14, EU:C:2016:30, paragraph 38, and of 6 October 2016, *Adrien and Others*, C-466/15, EU:C:2016:749, paragraph 22).

35 Secondly, an EU official may have the status of a migrant worker for the purposes of Article 45 TFEU as a national of a Member State working in the territory of a Member State other than his or her State of origin. However, the fact nevertheless remains that, in so far as EU officials are not

subject to national legislation on social security, as referred to in Article 2(1) of Regulation No 1408/71 and in the same article of Regulation No 883/2004, which defines the persons covered by those regulations, they cannot be characterised as 'workers' within the meaning of those provisions. Nor are they covered, in that context, by Article 48 TFEU, which conferred on the Council the task of instituting a scheme allowing workers to overcome any obstacles which may arise for them from national rules in the field of social security, a task which the Council fulfilled by adopting Regulation No 1408/71 and, subsequently, Regulation No 883/2004 (see, to that effect, judgments of 3 October 2000, *Ferlini*, C-411/98, EU:C:2000:530, paragraphs 41 and 42, and of 16 December 2004, *My*, C-293/03, EU:C:2004:821, paragraphs 34 to 37).

36 In fact, EU officials are subject to the joint social security scheme of the EU institutions, which, pursuant to Article 14 of the Protocol, is laid down by the European Parliament and the Council acting by means of regulations adopted under the ordinary legislative procedure and after consultation of the other institutions.

37 The scheme of social benefits was introduced by the Staff Regulations which set out the rules applicable to EU officials under Title V thereof, which is headed 'Emoluments and social security for officials', and, in particular, Chapters 2 and 3 thereof, which relate to social security benefits and pensions.

38 Therefore, the legal position of EU officials with regard to their social security obligations comes within the scope of EU law by reason of their employment by the European Union (see, to that effect, judgment of 13 July 1983, *Forcheri*, 152/82, EU:C:1983:205, paragraph 9).

39 The requirement for Member States to observe EU law when exercising their power to organise their social security schemes, as noted in paragraph 34 above, therefore extends to the rules governing the employment relationship between an EU official and the European Union, that is to say, the relevant provisions of the Protocol and of the Staff Regulations.

40 In that respect, as observed by the Advocate General in point 72 of his Opinion, first of all, the Protocol has the same legal value as the Treaties (Opinion 2/13 (Accession of the European Union to the ECHR) of 18 December 2014, EU:C:2014:2454, paragraph 161).

41 By analogy with Article 12 of the Protocol, which establishes, in respect of EU officials, a uniform tax for the benefit of the European Union on salaries, wages and emoluments paid by it and, consequently, provides for an exemption from national taxes on those amounts, Article 14 of the Protocol, in that it confers on the EU institutions the power to establish the scheme of social security for their own civil servants, must be regarded as meaning that the compulsory affiliation of EU officials to a national social security scheme and the requirement for those officials to contribute to the funding of such a scheme are outside the jurisdiction of the Member States.

42 Secondly, the Staff Regulations, in so far as they were established by Regulation No 259/68, have all the characteristics listed in Article 288 TFEU, which stipulates that a regulation has general application, is binding in its entirety and is directly applicable in all Member States. It follows that all Member States are also bound by the Staff Regulations (see, to that effect, judgments of 20 October 1981, *Commission* v *Belgium*, 137/80, EU:C:1981:237, paragraphs 7 and 8; of 7 May 1987, *Commission* v *Belgium*, 186/85, EU:C:1987:208, paragraph 21; of 4 December 2003, *Kristiansen*, C-92/02, EU:C:2003:652, paragraph 32; and of 4 February 2015, *Melchior*, C-647/13, EU:C:2015:54, paragraph 22).

43 In that context, it should be noted that, as is apparent from the fourth paragraph of Article 72(1) of the Staff Regulations, part of the contribution required to meet sickness insurance cover is to be

charged to the official, without the amount charged exceeding 2% of his or her basic salary. Article 73(1) of the Staff Regulations states that officials are, from the date of their entry into the service, insured against the risk of occupational disease or accidents and that they are to contribute to the cost of insuring against non-occupational risks up to 0.1% of their basic salary. Article 83(2) of the Staff Regulations also provides that officials are to contribute one third of the cost of the pension scheme, with that contribution being a given percentage of their basic salary.

44 It follows from the foregoing that the European Union alone, and not the Member States, has competence to establish the rules applicable to EU officials in respect of their social security obligations.

45 In fact, as observed by the Advocate General in point 76 of his Opinion, Article 14 of the Protocol and the provisions of the Staff Regulations on social security for EU officials fulfil, in respect of those officials, a function that is similar to that which Article 13 of Regulation No 1408/71 and Article 11 of Regulation No 883/2004 fulfil, in that they prohibit any obligation on EU officials to contribute to several schemes in this field.

46 National legislation, such as that at issue in the main proceedings, which subjects the income of an EU official to contributions and social levies specifically allocated for the funding of the social security schemes of the Member State concerned, therefore infringes the exclusive competence of the European Union under Article 14 of the Protocol and the relevant provisions of the Staff Regulations, in particular those which prescribe mandatory contributions to the funding of a social security scheme by EU officials.

47 In addition, such legislation might interfere with the equal treatment of EU officials and, therefore, discourage employment within an EU institution, since some officials would be required to contribute to a national social security scheme in addition to the joint social security scheme of the EU institutions.

48 The foregoing analysis is not called in question by the French Government’s claims that the contributions and social levies at issue in the main proceedings are classified as ‘taxes’ that are levied on income from real estate, not on earned income, and which do not directly give rise to any benefits in return or to any advantage in terms of social security benefits. In fact, as is apparent from the information provided by the referring court, those levies and contributions are in any event allocated specifically and directly for the funding of certain branches of the French social security scheme. An EU official such as Mr de Lobkowicz cannot, accordingly, be subject to those levies and contributions since his financial obligations in matters of social security are governed exclusively by the Protocol and the Staff Regulations and, as such, fall outside the jurisdiction of the Member States (see, by analogy, with regard to Regulation No 1408/71, judgment of 26 February 2015, *de Ruyter*, C-623/13, EU:C:2015:123, paragraphs 23, 26, 28 and 29).

49 In the light of the foregoing considerations, the answer to the question referred is that Article 14 of the Protocol and the provisions of the Staff Regulation on the joint social security scheme of the EU institutions must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that income from real estate received in a Member State by an official of the European Union who has his or her domicile for tax purposes in that Member State is subject to contributions and social levies that are allocated for the funding of the social security scheme of that same Member State.

Costs

50 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 (Grand Chamber) hereby rules:

Article 14 of Protocol (No 7) on the privileges and immunities of the European Union, annexed to the EU, FEU and EAEC Treaties, and the provisions of the Staff Regulations of Officials of the European Union on the joint social security scheme of the EU institutions must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that income from real estate received in a Member State by an official of the European Union who has his or her domicile for tax purposes in that Member State is subject to contributions and social levies that are allocated for the funding of the social security scheme of that same Member State.

[Signatures]

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*Language of the case: French