Anonymised version

Case C-321/24

Request for a preliminary ruling

Date lodged:

30 April 2024

Referring court:

Tribunal Judiciaire de Paris (France)

Date of the decision to refer:

4 April 2024

Applicant:

BC

Defendant:

S. C. P. Attal et Associés

TRIBUNAL JUDICIAIRE DE PARIS [COURT OF PARIS, FRANCE]

Verification of costs

…

INTERLOCUTORY ORDER

OF THE COSTS JUDGE

made on 4 April 2024

APPLICANT

BC

… 75005 PARIS

v

DEFENDANT

S.C.P. ATTAL & ASSOCIES

… 75008 PARIS

…

ORDER

I – Summary of the subject matter of the dispute

1 XY, a French national, died on 29 July 2020 in Belgium, where she had established her habitual residence.

2 She leaves as her heir her sister BC, a French national and French resident for tax purposes who resides in France.

3 XY's estate consists of movable and immovable property, located in both Belgium and France.

4 The succession was opened by Mr Marchant, a notary in Uccle (Belgium), on 12 October 2020. He drew up the certificate of inheritance on the same day.

5 The matter was referred to SCP ATTAL & Associés, a notary in Paris (France), for it to draw up the declaration of succession in France.

6 BC paid an advance of EUR 15 300 to be deducted from the French notary's fee on 2 March 2021; the advance was calculated based on the estimate of the total of the gross assets of the estate to be declared, located in France and in Belgium, that is to say, EUR 2 750 000.

7 The French declaration of succession was signed on 18 March and lodged on 23 March 2021 at the competent registration authority.

8 Mr Marchant, the Belgian notary, drew up the declaration of succession in Belgium on 24 April 2021, including all the assets located in both France and Belgium.

9 BC paid the Belgian notary's fee of EUR 16 621.30 (exclusive of tax), calculated on the basis of the total gross assets of the estate as determined by him, that is to say, EUR 2 838 422.41.

10 The French notary applied to the registrar of the tribunal judiciaire de Paris (Court of Paris) to obtain a certificate of verification of the costs for the purposes of the taxation of his remuneration, consisting of his fee calculated based on the gross

assets declared in France (EUR 2 716 652.41) and disbursements in the amount of EUR 14 177.60.

11 The registrar of the Court of Paris drew up the certificate of verification of the costs on 20 July 2022, which he calculated to be a sum of EUR 14 052.61, rejecting only the disbursements relating to copying and accepting the fee as calculated by the French notary based on the total gross assets of the estate.

12 BC contested the certificate of verification of the costs by registered letter with acknowledgment of receipt received on 24 June 2022 at the registry of the Court of Paris.

13 After several letters requesting observations, the parties were summonsed to appear at the hearing held on 28 September 2023.

14 The case was deferred to the hearing of 7 December 2023, which BC attended in person and SCP ATTAL & Associés attended represented by its counsel.

15 1. BC refers to her written pleadings and requests that the certificate of verification of the costs be set aside and a new certificate drawn up with the French notary's fee calculated on the basis of EUR 660 331.87, representing the share of the gross assets located in France only. She therefore requests that the difference in the fee paid in advance be refunded.

15.2. She puts forward two pleas in law:

(a) the basis for calculation of the notary's fee must be the same as the basis for calculation of the fiscal charges; however, pursuant to the Franco-Belgian Convention of 20 January 1959, the tax base in France consists of the value of the assets located in France only;

(b) the French notary's remuneration, calculated on the basis of the total gross assets of the estate, without taking into account the remuneration of the Belgian notary, who is the notary with territorial jurisdiction to determine the succession as the deceased's habitual residence is in Belgium, also calculated on the basis of the total gross assets of the estate, constitutes a restriction on the free movement of capital under Article 63 of the Treaty on the Functioning of the European Union (TFEU) because it reduces the value of the estate.

15.3. BC does not contest the principle that the French notary should be remunerated for the declaration of succession, but simply the basis of that remuneration and therefore its amount. She has, moreover, paid for the other documents drawn up by the French notary, such as certificates of ownership, without raising any objection.

16 1. SCP ATTAL & Associés refers to its written pleadings and requests that the certificate be confirmed and that the rejected amount of EUR 124.99 (incl. tax)

be included, namely that a sum of EUR 14 177.60 (incl. tax) is payable in total. In addition, it also applies for EUR 2 400 in procedural costs.

16. 2. It takes the view that:

(a) the basis for its fee must include all the assets of the estate, whether located in France or in another State;

(b) the tax basis in fact consists of all the assets of the estate, whether located in France or in another State, but tax is payable only on the property located in France, in accordance with the Franco-Belgian Convention;

(c) its fee, calculated on the basis of the value of the total gross assets of the estate located in France and in Belgium, is payable.

17 17.1. Deliberations on the case began on 11 January 2024 and were then adjourned to 29 February 2024 to seek the observations of the parties on the possibility of a question being referred for a preliminary ruling regarding the plea in law raised by BC alleging infringement of Article 63 TFEU.

17. 2. BC sent her observations by email received on 15 February 2024, stating that she was in favour of a question being referred for a preliminary ruling because it is lawful to ask about the compatibility with EU law of the double financial burden consisting in the two notaries' fees.

17. 3. SCP ATTAL & Associés stated that they had no observations to submit by email of 28 February 2024, requesting simply that any costs of referring a question for a preliminary ruling are not charged to it because the request was not made by it.

18 The deliberations were adjourned to 4 April 2024.

II- Applicable national law and case-law

Procedural context of the referral

19 The president of the relevant court or a judge delegated by him or her acts as the costs judge. A costs judge has jurisdiction to hear and determine challenges to the certificates of verification of the costs listed in Article 695 of the code de procédure civile (Code of Civil Procedure) in accordance with procedure laid down in Articles 704 to 718 of that code. He or she also has jurisdiction to rule on challenges related to the fees charged by officers of the court or by court or public officials, in accordance with the procedure laid down in Articles 719 to 721 of the Code of Civil Procedure which provides for direct referral of the matter to the judge.

20 A notary is a court or public official; the status of such officials was laid down in Ordinance No 45-2590 of 2 November 1945 on the status of notaries.

21 Article L444-1 of the code de commerce (Commercial Code) provides that the remuneration of a notary may consist of:

- a fee, or a regulated tariff, determined by legislation in respect of an act over which officers of the court have a monopoly;

- fees freely agreed with the client for the services which officers of the court perform concurrently with other professionals.

22 The documents drawn up by a notary, remuneration for which takes the form of a fee, are listed in Table 5 annexed to Article R444-3(1) of the Commercial Code.

23 In addition, the notary can also claim the reimbursement of those costs and expenses which he or she has paid, based on the actual cost of the expenditure or at a flat rate in accordance with Article R 444-12 of the Commercial Code. Those costs and expenses are provided for in annexed Article 4-8(6), by reference to Article R444-3(2) of the Commercial Code.

24 Fees are expenses under Article 695(6) of the Code of Civil Procedure, as are regulated expenses under paragraph 5 of the same article.

25 Where issues arise in relation to costs, the parties or the officer of the court may refer the matter to the registrar of the court having jurisdiction, who is to verify the amount of the costs and issue a certificate of verification of the costs under Articles 704 and 705 of the Code of Civil Procedure. The court having jurisdiction is determined by Article 52 of the Code of Civil Procedure: either the court before which the costs relating to proceedings have been incurred or the court within the jurisdiction of which the officer of the court performs his or her duties where the applications relating to costs, fees or expenses were not incurred in the context of proceedings.

26 Under Articles 708 and 709 of the Code of Civil Procedure, the certificate of verification of the costs is open to challenge: the president of the court or the judge delegated in that regard is to rule on the challenge by making an order fixing the costs, after receiving observations from the parties or having sought their observations. The judge may also refer an application to a hearing of the court pursuant to Article 712 of the Code of Civil Procedure.

27 Under Articles 710 and 711 of the Code of Civil Procedure, the judge rules on the application for costs to be fixed and on applications relating to the recovery of expenses by making, including *ex officio*, the necessary reimbursements and indicating the amounts already collected in advance.

Applicable substantive legislation

28 A declaration of succession is a requirement under Article 800 of the code général des impôts (General Tax Code) and must be obtained by the heirs. It is a document which provides information to the tax authorities to enable them to

calculate the tax payable on the inheritance, which must include the deceased's estate (assets and liabilities) and state the identity of the heirs.

29 Under Article 800 and 802 of the General Tax Code, the declaration of succession must be detailed and complete, including assets located in France and abroad, in accordance with the principle of territoriality as laid down in Article 750b of the General Tax Code (see Official Tax Journal BOI-ENR-DMTG-10-50-70-17/03/2014 produced by SCP ATTAL & Associés as document No 4).

30 France and Belgium signed a tax convention on 20 January 1959 which provides for a mechanism to take into account the tax paid in one of the States in order to avoid double taxation.

31 A notary must necessarily be involved in the case of estates of greater than EUR 5 000 and where the estate includes immovable property. Article L312-1-4 of the code monétaire et financier (Monetary and Financial Code) allows the heir to close the deceased's accounts and have the funds transferred to him or her by proving his or her status as the heir by a statement signed by all the heirs indicating that the estate does not include immovable property and where the amount is less than EUR 5 000, the amount fixed by the Decree of 7 May 2015 adopted pursuant to Article L312-4-1 of the Monetary and Financial Code. In other cases, a document containing statements confirming matters of common knowledge drawn up by a notary is mandatory in order to prove his or her status as heir under Article 730-1 of the Civil Code, and the involvement of a notary is again mandatory where the estate includes immovable property, as he or she takes care of the notices of estate transfer made in the Land Register at the relevant Land Registration Authority (Article 4 of décret No 55- 22 du 4 janvier 1955 portant réforme de la publicité foncière (Decree No 55-22 of 4 January 1955 reforming land registration).

32 The declaration of succession is a document referred to in point 8 of Table 5 of annexed Article 4-7 to Article R444-3(I) of the Commercial Code listing the services provided by notaries.

33 The rate specified for the declaration of succession is fixed by Article A444-63 of the Commercial Code. The fee collected by the notary for the declaration of succession is calculated in proportion to the total gross assets of the estate as follows:

- from EUR 0 to EUR 6 500: 1.548%;
- from EUR 6 500 to EUR 17 000: 0.851%;
- from EUR 17 000 to EUR 30 000: 0.580%;
- over EUR 30 000: 0.426%.

34 French case-law does not require that the basis for calculation of the tax payable and the basis for calculation of the notary's fee are the same: in the case cited by BC, the Cour de cassation (Court of Cassation, France) found in favour of the First President of the cour d'appel de Versailles (Court of Appeal, Versailles, France), who found that the tax base was the same as the basis for the emolument, without making this a generally applicable rule (Commercial Division of the Court of Cassation, 4 October 2011, Appeal No 10-20.218). However, the Court of Cassation has held that the two bases for assessment could not be the same because the notary's fee must be calculated on the basis of total gross assets of the estate, there being no need to deduct the liabilities, even though the liabilities will be deducted in order to calculate the inheritance tax (First Civil Chamber of the Court of Cassation, 6 February 1996, Appeal No 93-21.108).

III- European Union law

35 Article 63(1) of the Treaty on the Functioning of the European Union (TFEU) prohibits all restrictions on the movement of capital between Member States and between Member States and third countries.

36 The principle of the free movement of capital laid down in Article 63(1) TFEU has its origin in Article 67(1) of the 67(1) of the Treaty establishing the European Economic Community, the original version of which required the Member States to abolish progressively between themselves restrictions on the movement of capital belonging to persons resident in Member States and discrimination based on the nationality or on the place of residence of the parties or on the place where such capital is invested.

37 Article 1 of Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty [establishing the European Economic Community] provides for the abolition of restrictions on movements of capital taking place between persons resident in Member States, as set out in Annex I to that directive. Under point D of Section XI of Annex I to that directive, inheritances and legacies are personal capital movements.

38 In paragraph 16 of its judgment of 30 June 2016 (Case C-123/15, EU:C:2016:496), the Court of Justice of the European Union held that: '*inheritances consisting in the transfer to one or more persons of assets left by a deceased person constitute, according to the settled case-law of the Court, movements of capital within the meaning of Article 63 TFEU, except in cases where their constituent elements are confined within a single Member State (see, to that effect, judgments of 23 February 2006 in van Hilten-van der Heijden, C-513/03, EU:C:2006:131, paragraphs 39 to 42; of 17 January 2008 in Jäger, C-256/06, EU:C:2008:20, paragraphs 24 and 25; of 17 October 2013 in Welte, C-181/12, EU:C:2013:662, paragraphs 19 and 20; and of 3 September 2014 in Commission v Spain, C-127/12, not published, EU:C:2014:2130, paragraphs 52 and 53)*'.

39 The Court of Justice of the European Union held in its judgment of 26 May 2016, *Commission* v *Greece*, C-244/15, EU:C:2016:359, that it was apparent from settled case-law that, '*with regard to inheritances, the measures which Article 63 TFEU prohibits as constituting restrictions on the movement of capital include those the effect of which is to reduce the value of the inheritance of a resident of a Member State other than the Member State in which the assets concerned are situated and which taxes the transfer of those assets by way of inheritance (see, inter alia, judgments of 11 December 2003 in Barbier, C-364/01, EU:C:2003:665, paragraph 62, and of 17 October 2013 in Welte, C-181/12, EU:C:2013:662, paragraph 23)*'.

40 The reduction of the value of an inheritance through the application of national legislation therefore constitutes a restriction on the free movement of capital. The Court held in its judgment of 23 February 2006, *van Hilten-van der Heijden*, C-513/03, EU:C:2006:131, paragraph 44: '*it follows from the case-law that the measures prohibited by Article 73b(1) of the Treaty, as being restrictions on the movement of capital, include those which are likely to discourage non-residents from making investments in a Member State or to discourage that Member State's residents to do so in other States or, in the case of inheritances, those whose effect is to reduce the value of the inheritance of a resident of a State other than the Member State in which the assets concerned are situated and which taxes the inheritance of those assets*' (see also judgments of the Court of 17 October 2013, *Welte*, C-181/12, EU:C:2013:662, paragraphs 25 and 26, and of 11 September 2008, *Eckelkamp*, C-11/07, EU:C:2008:489, paragraphs 41 to 45).

41 The Court of Justice of the European Union has further held that unfavourable tax treatment which may deter non-residents from acquiring or retaining immovable property situated or investments located in a Member State constitutes a restriction on the free movement of capital (see judgments of the Court of 31 March 2011, *Schröder*, C-450/09, EU:C:2011:198, paragraphs 32 and 33; of 12 April 2018, *Commission* v *Belgium*, C-110/17, EU:C:2018:250, paragraph 40; and of 11 September 2014, *Verest and Gerards*, C-489/13, EU:C:2014:2210, paragraph 21).

42 Article 65(1) TFEU provides for derogations from the principle of the free movement of capital:

- Article 65(1)(a) allows Member States '*to apply the relevant provisions of their [tax] law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested*';

- Article 65(1)(b) allows Member States '*to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of*

administrative or statistical information, or to take measures which are justified on grounds of public policy or public security'.

43 It should be added that the measures provided for in Article 65(1) must not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital, in accordance with paragraph 3 of the same article.

44 The Court of Justice of the European Union has strictly interpreted the derogation provided for in the field of taxation by Article 65(1)(a) TFEU as meaning that national provisions which distinguish between taxpayers who are not in the same situation with regard to their place of residence or the place where their capital is invested are not automatically compatible with Article 63 TFEU because that derogation is itself limited by Article 65(3) [TFEU], which provides that the national provisions must not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital (see judgments of the Court of 4 September 2014, *Commission* v *Germany*, C-211/13, EU:C:2014:2148, paragraphs 45 and 46, and of 8 June 2016, *Hünnebeck*, C-479/14, EU:C:2016:412, paragraphs 50 to 53).

45 Differences in treatment can be authorised only if they relate to situations which are not objectively comparable or if they are justified by an overriding reason in the public interest (see judgments of the Court of 30 June 2016, *Max-Heinz Feilen*, C-123/15, EU:C:2016:496, paragraphs 25 and 26; of 3 September 2014, *Commission* v *Spain*, C-127/12, EU:C:2014:2130, paragraph 73; of 6 June 2000, *Verkooijen*, C-35/98, EU:C:2000:294, paragraph 43; of 7 September 2004, *Manninen*, C-319/02, EU:C:2004:484, paragraph 29; of 8 September 2005, *Blanckaert*, C-512/03, EU:C:2005:516, paragraph 42; and of 17 September 2009, *Glaxo Wellcome*, C-l82/08, EU:C:2009:559, paragraph 68).

46 With regard to the derogation provided for in Article 65(1)(b) [TFEU], the Court further recalled in its judgment of 21 May 2019, *Commission* v *Hungary* [*(Usufruct Over Agricultural Land)*], C-235/17, EU:C:2019:432, paragraph 103, that, '*as a derogation from the fundamental principle of the free movement of capital, Article 65(1)(b) TFEU must be interpreted strictly (judgment of 6 March 2018, SEGRO and Horváth, C-52/16 and C-113/16, EU:C:2018:157, paragraph 96)*'.

47 The Court of Justice of the European Union found in its judgment of 18 June 2020, *Commission* v *Hungary* [*(Transparency of associations)*], C-78/18, EU:C:2020:476, paragraph 76, '*as the Court has consistently held, a State measure which restricts the free movement of capital is permissible only if, in the first place, it is justified by one of the reasons referred to in Article 65 TFEU or by an overriding reason in the public interest and, in the second place, it observes the principle of proportionality, a condition that requires the measure to be appropriate for ensuring, in a consistent and systematic manner, the attainment of the objective pursued and not to go beyond what is necessary in order for it to be attained (see, to that effect, judgment of 21 May 2019, Commission v Hungary*

(Rights of usufruct over agricultural land), C-235/17, EU:C:2019:432, paragraphs 59 to 61 …)'.

48 Thus, the requisite measure within the meaning of Article 65(1)(b) [TFEU] must have the very aim of preventing infringement of laws and regulations (see judgment of 2 March 2023, *PrivatBank and Others*, C-78/21, EU:C:2023:137, paragraph 60).

49 Procedures for the declaration of capital movements for purposes of administrative or statistical information or measures justified on grounds of public policy or public security must observe '*the principle of proportionality, a condition which requires them to be appropriate for ensuring the attainment of the objective legitimately pursued and not go beyond what is necessary in order for it to be attained (see, to that effect, judgment of 6 March 2018, SEGRO and Horváth, C-52/16 and C-113/16, EU:C:2018:157, paragraphs 76 and 77)*' (judgment of the Court of 31 May 2018, *Zheng*, C-190/17, EU:C:2018:357, paragraph 37).

50 Lastly, BC relies on Regulation [(EU) No]650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptable and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, which allows the court having jurisdiction and the applicable law to be determined if a challenge is made. However, a challenge did not have to be settled in the case of XY's estate and the notary did not perform a judicial rule, which seems to rule out the application of that regulation.

IV- Questions referred for a preliminary ruling which are necessary to resolve the dispute

51 Article 267 of the Treaty on the Functioning of the European Union provides: '*the Court of Justice of the European Union shall jurisdiction to give preliminary rulings concerning:*

(a) the interpretation of the Treaties;

(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.'

52 In the present case, XY's estate concerns two Member States – France and Belgium – in which the deceased owned movable and immovable property. The deceased resided in Belgium whereas her sole heir resides in France, and property is located in the two Member States. Her succession therefore entails personal capital movements involving two Member States of the European Union.

53 BC, who is XY's heir, has a legal obligation to use the services of a notary to draw up a French declaration of succession, as required by French law, since the value of the estate is greater than EUR 5 000 and includes immovable property. That French declaration of succession must list all the deceased's assets, whether they are located in France or in Belgium.

54 She also lodged a declaration of succession in Belgium, which was drawn up by the Belgian notary.

55 BC paid the taxes relating to the inheritance in France, calculated based solely on the movable and immovable property located in France, and then paid the taxes relating to the inheritance in Belgium, calculated based on all the movable and immovable property located in France and in Belgium but reduced by the taxes paid in France, in accordance with the Franco-Belgian Tax Convention of 20 January 1959. The application of that convention is therefore an effective means of preventing an infringement of the free movement of capital as it avoids the assets in the estate being taxed twice.

56 In addition, BC also paid the Belgian notary's fee, calculated on the basis of the total gross assets of the estate, and she paid, in advance, the French notary's fee, likewise calculated on the basis of the total gross assets of the estate, both movable and immovable assets, located in France and in Belgium, in accordance with the draft costs (see document No 4 lodged by BC).

57 The French notary argues that, by applying French law, he can calculate his remuneration based on the total gross assets of the estate, whether they are located in France or not, in accordance with Article 800 of the General Tax Code and Article A444-63 of the Commercial Code. He issued his invoice accordingly.

58 The value of the inheritance received by BC is therefore reduced by the notary's remuneration, calculated on the basis of the total gross assets of the estate, which may constitute a breach of the free movement of capital.

59 This court therefore asks what conclusions are to be drawn from the law as it stands, which may deter a national of one Member State from investing in other Member States, in the light of the case-law of the Court of Justice of the European Union cited above:

60 **Question No 1:** is Article 63(1) of the Treaty on the Functioning of the European Union to be interpreted as precluding the dual remuneration of the notaries of two Member States of the European Union involved in the same succession, which includes assets in the two Member States, the calculation of which is also based on the total gross assets of the estate, without taking into account the remuneration paid to the other notary, whereas the involvement of the notary is a legal requirement?

61 **Question No 2:** is Article 63(1) of the Treaty on the Functioning of the European Union to be interpreted as precluding the remuneration of a notary, whose involvement in a succession including assets in two Member States of the European Union is a legal requirement, from being calculated based on the total gross assets of the estate and not just on the gross assets located in his or her Member State?

62 In addition, while a declaration of succession is a requirement imposed by tax law, the remuneration of the notary is not itself fiscal in nature. Neither the national legislation nor the Franco-Belgian Convention provides that the notary's remuneration is to be based on the same basis for calculation as the taxation due. Under domestic case-law, the basis for that remuneration does not necessarily have to be the same as the basis for the calculation of taxation.

63 At the present stage, the legislation laying down the rules governing the calculation of the remuneration of the notary who draws up a declaration of succession does not itself fall within the scope of derogation provided for in Article 65(1)(a) [TFEU].

64 However, the involvement of a notary is a requirement under tax legislation and appears to be a condition for application of the Franco-Belgian Convention of 20 January 1959, which effectively prevents a separate infringement of the free movement of capital by avoiding double taxation.

65 In that regard, the Court of Justice of the European Union has ruled on the application of tax legislation which had the effect of reducing the value of an inheritance and not on the remuneration of the notary, a court or public official, which has the same effect and the involvement of whom is mandatory where an inheritance involves assets greater than EUR 5 000 or includes immovable property.

66 The legislation at issue in the main proceedings could therefore be viewed as a derogation – the 'relevant provision' of tax law within the meaning of Article 65(1)(a) of the Treaty on the Functioning of the European Union.

67 This court therefore asks about the scope of that derogation laid down in EU law:

68 **Question No 3**: are Articles 63(1) and 65(1)(a) of the Treaty on the Functioning of the European Union to be interpreted as meaning that the dual remuneration of two notaries, involved in the same succession, which is again calculated based on

the total gross assets of the estate located in two Member States, can constitute a 'relevant provision of their tax law' derogating from the prohibition on restricting movements of capital laid down in the first of those articles, whereas the involvement of the notary is a legal requirement?

69 Lastly, the purpose of the legislation laying down the rules for calculating the remuneration of the notary is not per se to prevent infringements or to declare movements of capital, and does not appear to be justified on grounds related to public policy or public security.

70 Nevertheless, the involvement of the notary is a requirement for the tax authority's information purposes, with a view to calculating the taxes charged on the inheritance and may be intended to prevent tax infringements from being committed.

71 At the present stage, the Court has not ruled on the remuneration of the notary, in so far as it is the consequence of legislation which may be intended to prevent tax infringements or of legislation providing for a procedure for declaring capital movements for administrative or statistical purposes.

72 This court therefore asks about the scope of that derogation:

73 **Question No 4**: are Articles 63(1) and 65(1)(b) of the Treaty on the Functioning of the European Union to be interpreted as meaning that the dual remuneration of two notaries, involved in the same succession, which is again calculated based on the total gross assets of the estate located in the two Member States, can constitute an essential measure to thwart tax infringements or a procedure for the declaration of capital movements for administrative or statistical information purposes derogating from the prohibition on restricting capital movements laid down in the first of those articles, whereas the involvement of the notary is a legal requirement?

74 The proceedings must be stayed pending the response from the Court to those questions referred for a preliminary ruling concerning the interpretation of Articles 63(1) and 65(1)(a) and (b) TFEU.

V – ON THOSE GROUNDS

I, the delegated costs judge, ruling in open court by secondment to the registry, by interlocutory order:

Having regard to Article 267 of the Treaty on the Functioning of the European Union,

REQUEST the Court of Justice of the European Union to rule on the following questions referred for a preliminary ruling:

- **Question No 1:** is Article 63(1) of the Treaty on the Functioning of the European Union to be interpreted as precluding the dual remuneration of the notaries of two Member States of the European Union involved in the same succession, which includes assets in the two Member States, the calculation of which is also based on the total gross assets of the estate, without taking into account the remuneration paid to the other notary, whereas the involvement of the notary is a legal requirement?

- **Question No 2:** is Article 63(1) of the Treaty on the Functioning of the European Union to be interpreted as precluding the remuneration of a notary, whose involvement in a succession including assets in two Member States of the European Union is a legal requirement, from being calculated based on the total gross assets of the estate and not just on the gross assets located in his or her Member State?

- **Question No 3:** are Articles 63(1) and 65(1)(a) of the Treaty on the Functioning of the European Union to be interpreted as meaning that the dual remuneration of two notaries, involved in the same succession, which is again calculated based on the total gross assets of the estate located in two Member States, can constitute a 'relevant provision of their tax law' derogating from the prohibition on restricting movements of capital laid down in the first of those articles, whereas the involvement of the notary is a legal requirement?

- **Question No 4**: are Articles 63(1) and 65(1)(b) of the Treaty on the Functioning of the European Union to be interpreted as meaning that the dual remuneration of two notaries, involved in the same succession, which is again calculated based on the total gross assets of the estate located in the two Member States, can constitute an essential measure to thwart tax infringements or a procedure for the declaration of capital movements for administrative or statistical information purposes derogating from the prohibition on restricting capital movements laid down in the first of those articles, whereas the involvement of the notary is a legal requirement?

STAY THE PROCEEDINGS at the request of the parties pending the response from the Court of Justice of the European Union to the questions referred for a preliminary ruling,

…