

**Case C-195/23****Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

27 March 2023

**Referring court or tribunal:**

Tribunal du travail francophone de Bruxelles (Belgium)

**Date of the decision to refer:**

13 March 2023

**Applicant:**

GI

**Defendant:**

Partena, assurances sociales pour travailleurs indépendants ASBL

---

**1. Subject matter and facts of the dispute:**

- 1 GI, an official at the European Commission, has, since 2015, had additional employment as a teacher, up to a maximum of 20 teaching hours per year.
- 2 By means of a letter dated 4 July 2018, the Institut national d'assurances sociales pour travailleurs indépendants (National Institute for the Social Security of the Self-employed, 'INASTI') reminded GI that, in his capacity as a teacher, he was engaged in self-employment and invited him to join a social insurance fund of his choosing.
- 3 GI joined the Partena insurance fund and paid the social security contributions.
- 4 On 15 March 2022, GI contested the fact that he was subject to the Belgian social security scheme for the self-employed and ordered Partena to refund the social security contributions paid in the amount of EUR 3 242.09.
- 5 On 13 October 2022, GI brought an action before the Tribunal du travail (Labour Tribunal), the referring court.

**2. Provisions at issue:**

**A. *The Treaty on European Union***

6 Article 4(3) TEU provides:

‘Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

The Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives’.

**B. *Protocol No 7 on the Privileges and Immunities of the European Union (OJ 2010 C 83, p. 266)***

7 Article 12 provides:

‘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’.

8 Article 14 provides:

‘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’.

**3. Arguments of the parties:**

**A. *GI***

9 GI argues, in essence, that the obligation to comply with the social security scheme for the self-employed infringes the principle of a single social security scheme for European institution officials, Article 4(3) TEU, and the principle of

sincere cooperation, in that it constitutes an obstruction likely to discourage employment within an EU institution.

**B. Partena**

- 10 According to INASTI, GI falls under the definition of a self-employed person due to his teaching activity, and must therefore be a member of a social insurance fund for the self-employed and pay social security contributions.

**4. Assessment of the court:**

- 11 As GI is an EU official, Articles 12 and 14 of Protocol (No 7) on the privileges and immunities of the European Union should be taken into account.
- 12 However, in the judgment of 10 May 2017, *Wenceslas de Lobkowitz v Ministère des Finances et des Comptes publics*, C-690/15, EU:C:2017:355, the Court of Justice stated:

‘36 ... 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.

(...)

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.

(...)

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.

(...)

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'. (Emphasis added by the court)

- 13 Therefore, the social security scheme for EU officials is a joint scheme for which the European Union has exclusive competence.
- 14 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems establishes the principle of single applicable legislation.
- 15 However, in view of the case-law of the Court of Justice, Regulation (EC) No 883/2004, and in particular Article 11(1) on the principle of single applicable legislation, are not applicable to EU officials (see, to that effect, judgments of 16 December 2004, *Gregorio My v Office national des pensions (ONP)*, C-293/03, EU:C:2004:821 and of 10 May 2017, *Wenceslas de Lobkowicz v Ministère des Finances et des Comptes publics*, C-690/15, EU:C:2017:355).
- 16 However, the question arises as to whether such a principle can apply by analogy to EU officials. In its judgment of 10 May 2017 *Wenceslas de Lobkowicz v Ministère des Finances et des Comptes publics*, C-690/15, EU:C:2017:355, the Court of Justice seems to reply in the affirmative, but the question referred for a preliminary ruling related to income from real estate and not income from employment other than that associated with the status of European official, which does not correspond to the situation of GI, who is performing another professional activity.

17 Furthermore, in the spirit of the principle of sincere cooperation, established by Article 4(3) TEU, the Court of Justice departed from the national provisions of a Member State in terms of social security by considering that those provisions are likely to hinder, and hence discourage, employment within the EU institutions.

18 In its judgment of 10 September 2015, *Aliny Wojciechowski v Office national des pensions (ONP)*, C-408/14, EU:C:2015:591, the Court of Justice stated:

‘44 Such legislation could deter a worker who has acquired a certain length of service under the pension scheme for employed persons in that Member State from accepting a post in the service of an EU institution located in that State or encourage him to leave the post he holds in that institution early if, on account of that legislation, he may, by holding a post in that institution or by remaining in its service for a considerable time, lose the opportunity of benefiting from the pension rights which he has acquired by virtue of his activity as an employed person within that Member State prior to entering the service of the European Union.

45 Such consequences cannot be accepted in the light of the duty of sincere cooperation and assistance which Member States owe the European Union and which finds expression in the obligation laid down in Article 4(3) TEU to facilitate the achievement of the European Union’s tasks’.

19 In its judgment of 4 February 2015, *Office national de l’emploi v Marie-Rose Melchior*, C-647/13, EU:C:2015:54, the Court of Justice stated:

‘27 Legislation of a Member State that does not take into account, in relation to eligibility for unemployment benefit, periods of work completed as a member of the contract staff in an EU institution established in that Member State is also such as to impede the recruitment by those institutions of contract staff. As the Advocate General has observed in points 51 to 53 of his Opinion, legislation of that kind is liable to deter workers resident in that Member State from engaging in employment in an EU institution the duration of which, as limited by regulation, means that they face the prospect of having, sooner or later, to enter or re-enter the national labour market, since, owing to that employment, they may not reach the number of working days that is required by that legislation to claim benefits in the event of unemployment.

28 Such legislation may give rise to the same deterrent effect as regards the failure to treat days of unemployment which have given rise to payment of an unemployment allowance pursuant to the Conditions of Employment as working days for the purpose of eligibility for unemployment benefit in that Member State, given that days of unemployment for which benefit has been paid under the legislation of that Member State are so treated’.

20 Lastly, in its judgment of 10 May 2017, *Wenceslas de Lobkowicz v Ministère des Finances et des Comptes publics*, C-690/15, EU:C:2017:355, the Court of Justice added:

‘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’.

- 21 From the examination of the cited case-law, it seems that a case such as that of GI has not yet been considered and submitted to the Court of Justice. However, the issues of GI’s being subject to the Belgian social security scheme for the self-employed can only be addressed in the light of the reply of the Court of Justice to the question referred for a preliminary ruling, which will be put forward in application of Article 267 TFEU.
- 22 The court specifies that a similar question referred for a preliminary ruling (albeit in a different context) was put to the Court of Justice on 9 June 2022 in a request for a preliminary ruling to the Court of Justice under case number C-415/22.

**5. The question referred for a preliminary ruling:**

- 23 The referring court refers the following question to the Court of Justice:

Do Protocol (No 7) on the privileges and immunities of the European Union, in particular Article 14 thereof, the principle of a single social security scheme applicable to workers, whether employed or self-employed, active or retired, and the principle of sincere cooperation as set out in Article 4(3) of the Treaty on European Union preclude a Member State from imposing a national social security scheme on, and requiring the payment of social security contributions from, an official who, in addition to his employment within a European institution, also carries out additional teaching activities with the latter’s authorisation, when that official is, by virtue of the Staff Regulations of Officials, already subject to the joint social security scheme of the EU institutions?