

**Case C-401/23**

**Request for a preliminary ruling**

**Date lodged:**

30 June 2023

**Referring court:**

Tribunal Judiciaire de Metz (France)

**Date of the decision to refer:**

26 May 2023

**Applicant:**

Caisse autonome de retraite des chirurgiens-dentistes et des sages-femmes (CARCDSF)

**Defendant:**

E ... D ...

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**REQUEST FOR A PRELIMINARY RULING**

**submitted to the**

**COURT OF JUSTICE OF THE EUROPEAN UNION**

**26 May 2023**

**Referring court:**

Tribunal judiciaire de METZ, pôle social (Court of Metz, social division, France) [...]

**Parties before the court:**

Applicant: CAISSE AUTONOME DE RETRAITE DES CHIRURGIENS-DENTISTES et des SAGES-FEMMES (CARCDSF)- [Independent Retirement Fund of Dental Surgeons and Midwives] [...] PARIS [...]

Defendant: Mr E ... D ..., residing in Moselle [...]

## 1 Facts of the dispute in the main proceedings

- 1.1 Mr E ... D ... is a dental surgeon practising on French territory, in Moselle [...].
- 1.2 As such, he is subject, pursuant to Article L 111-1 of the code de la sécurité sociale (Social Security Code), to an obligation to join and to pay contributions to the CARCDSF for the social security pension scheme.
- 1.3 Mr E ... D ... contests that obligation and has not paid any compulsory contributions in respect of 2019 or 2020.
- 1.4 The CARCDSF sent Mr E ...D ... letters of formal notice to pay the sums corresponding to the affiliation obligation followed by two demands for payment.
- 1.5 Mr E ... D ... lodged an objection to those demands and brought the matter before the referring court.
- 1.6 Mr E ... D. submits that the national law at issue is contrary to EU law in relation to the freedom to provide services, and requests the referring court to ask the Court of Justice of the European Union for a preliminary ruling.

## 2 Provisions applicable to the dispute

2.1 Article 56 [first and second paragraphs] TFEU which provides [...]: *Within the framework of the provisions set out below, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Union.*

2.2 Article L 111-1 of the Social Security Code provides as follows:

*Social security is based on the principle of national solidarity.*

It covers, for any person working or residing in France in a stable and lawful fashion, costs relating to sickness, maternity and paternity, as well as family and self-sufficiency costs.

It guarantees workers against risks of any kind likely to reduce or to eliminate their income. That guarantee operates through the affiliation of the individuals concerned to one or more compulsory schemes.

It covers health costs, support for self-sufficiency, the provision of social insurance benefits, in particular old-age benefits, the provision of benefits relating to accidents at work or occupational diseases and the provision of family benefits

covered by that code, subject to the provisions of international agreements and EU regulations.

### **3 GROUNDS of the request for a preliminary ruling**

- 3.1** The organisation of the functioning of the social security system, in the present case retirement and pension schemes, falls under the competence of European Union Member States, in accordance with Article 153 TFEU, and the French State can therefore lay down in national law the rules relating to the operation of such schemes and, in particular, the issue of affiliation and the associated obligation to pay contributions.
- 3.2** The Member States' competence must, however, comply with EU law, including the freedom to provide services provided for in Articles 56 to 62 TFEU.
- 3.3** The obligation to join and to pay contributions, in the present case to the retirement scheme managed by the CARCDSF, laid down in Article L 111-1 of the Social Security Code, amounts to a derogation from the freedom to provide services provided for in Articles 56 to 62 TFEU, since it deprives the contributor of the choice of another service equivalent or better suited to his or her situation.
- 3.4** That provision of national law, which amounts to a restriction in respect of the aforementioned principle of EU law, must constitute an overriding reason relating to the public interest according to the criteria identified by the Court of Justice in its case-law; it is apparent from that case-law that the national provision must be qualified as lawful, sufficiently adequate to achieve the objective – in the present case that of protecting the financial balance of the pension scheme – in a consistent and systematic manner, and lastly it must employ strict means necessary to achieve it.
- 3.5** Mr E ....D has standing to call into question the compliance with EU law of the national law at issue, in the present case the obligation to pay contributions to a specific fund – the CARCDSF – pursuant to Article L 111-1 of the Social Security Code.
- 3.6** [Article 19(3) TEU] and [Article] 267 TFEU confer on national courts the possibility, in a situation such as that in the main proceedings relating to decisions subject to internal appeal, to refer questions on the validity and interpretation of acts of the institutions, bodies, offices or agencies of the European Union to the Court of Justice for a preliminary ruling.
- 3.7** The referring court is not aware of any case-law of the Court of Justice relating to whether the obligation under national law to join and to pay contributions to a French pension scheme is consistent with the freedom to provide services provided for by EU law, having regard to the complaint raised by Mr [ED] concerning the recurrent deficits of the scheme at issue.

The CARCDSF does not invoke any decisions issued in that regard by the Court of Justice.

- 3.8** The plea of illegality [...] raised by Mr E ...D ... in respect of the obligation to join and to pay contributions, in the light of EU law providing for the freedom to provide services, is liable to resolve the dispute consisting in the objections lodged by the individual concerned to two demands for payment of compulsory contributions to the pension scheme for 2019 and 2020.
- 3.9** The restrictive measure at issue is based on the need for protecting the financial balance of social security systems – in this case pension schemes – which is a shared objective of national and EU law.
- 3.10** That objective is not achieved by the recurrent deficits identified, over a long period, or by the use of temporary measures that are constantly being renewed, through the creation in 1996 of the Caisse d’amortissement de la dette sociale (Social Security Debt Redemption Fund, ‘the CADES’); that fund is responsible for borrowing on international capital markets and guaranteeing such borrowings with resources separate from social contributions [intended to bear] the social debt transferred to it, primarily through the social debt redemption tax (CRDS) and a part of the generalised social contribution (CSG). Initially scheduled to fulfil its mission in 2009, the current mandate of the CADES extends until the end of 2023, since the debt remaining to be repaid amounted to EUR 136 billion at the end of 2023, and is constantly increasing, especially against a background of significant increases in interest rates on loans.
- 3.11** It must therefore be noted that over a long period, extending at least from 1996 to today, and looking ahead to 2033, the compulsory nature of the obligation to join and to pay contributions is not sufficient to meet the intended objective of protecting the financial balance of the social security system. Such a scheme requiring mandatory affiliation and the payment of contributions amounts to a restriction on EU law providing for the freedom to provide services, and the justification for that derogation is based on an objective that has not been regularly achieved.
- 3.12** It must therefore be acknowledged that the question posed by Mr E ...D..., who disputes the fact that it is not possible to opt for another pension scheme of his choice, is relevant and there is therefore a doubt as to the compliance of the national system with EU law with regard to the freedom to provide services, thereby requiring interpretation by the Court of Justice by means of a preliminary ruling.
- 3.13** Of the four questions that Mr E ... D ... asks the court to refer to the Court of Justice for a preliminary ruling, only two are relevant [...] [T]he questions relating to lawfulness and to the concepts of necessary measure and least

restrictive measure are excluded from the scope of the request for a preliminary ruling.

**3.14** The request for a preliminary ruling, set out below, has been reworded [...].

**3.15** [...] [Procedural details]

#### **4 Request for a preliminary ruling**

The court asks the Court of Justice of the European Union to answer the following question:

*Must Article 56 TFEU, providing for the freedom to provide services, be interpreted as precluding the obligation to join and to pay contributions to a public social security scheme, laid down in Article L 111-1 of the Social Security Code – in the present case, the CARCDSF old-age pension scheme – taking into account, first, the criterion of consistency, and, second, the criterion of systematicity, in so far as the national restrictive measure pursues the objective of maintaining and guaranteeing the financial balance of the social security system, but without ever achieving it, and by organising the management of recurrent deficits?*

[...]

WORKING DOCUMENT