

Case C-151/24 [Luevi]ⁱ**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 February 2024

Referring court:

Corte costituzionale (Italy)

Date of the decision to refer:

27 February 2024

Appellant:

Istituto nazionale della previdenza sociale (INPS)

Respondent:

VM

Subject matter of the main proceedings

Constitutional legitimacy proceedings brought before the Corte costituzionale (Constitutional Court) on the initiative of the Corte di Cassazione (Court of Cassation), concerning questions on the constitutional legitimacy of certain provisions of Italian law which the latter must apply in proceedings pending before it. In particular, those provisions make the grant of the social allowance to third-country nationals subject to possession of a long-term resident's EU residence permit and to proof that they have resided legally for a continuous period of at least 10 years in the national territory. However, the person concerned, the respondent in the main proceedings, holds only an EU residence permit for family reasons and the INPS therefore refused to grant her that allowance.

ⁱ The name of the present case is fictitious. It does not correspond to the real name of any of the parties to the proceedings.

Subject matter and legal basis of the request

In the context described above, the Constitutional Court is making the present reference to the Court of Justice for a preliminary ruling pursuant to Article 267(2) TFEU, as the answer to the questions on constitutional legitimacy requires the interpretation of the relevant provisions of EU law, in particular Article 12 of Directive 2011/98.

Question referred for a preliminary ruling

Is Article 12(1)(e) of Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, giving specific expression to the protection of the entitlement to social security benefits provided for in Article 34(1) and (2) of the Charter of Fundamental Rights of the European Union, to be interpreted as meaning that it covers assistance such as the social allowance under Article 3(6) of legge 8 agosto 1995, n. 335 (Riforma del sistema pensionistico obbligatorio e complementare) (Law No 335 of 8 August 1995 reforming the compulsory and complementary pension scheme), and does EU law therefore preclude national legislation which fails to extend to foreign nationals holding a single permit as referred to in that directive the assistance already granted to foreign nationals on condition that they hold a long-term resident's EU residence permit?

Provisions of European Union law and case-law relied on

Charter of Fundamental Rights of the European Union ('the Charter'): Article 34, on entitlement to social security benefits.

Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State ('Directive 2011/98'): Article 12(1)(e), read in conjunction with Article 3(b) and (c) and recitals 2, 19 and 20.

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems ('Regulation No 883/2004'): Articles 3, 4 and 70 and Annex X.

Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality: ('Regulation No 1231/2010'): Article 1.

Judgments of the Court of Justice of 2 September 2021, *INPS (Childbirth and maternity allowances for holders of single permits)*, C-350/20, EU:C:2021:659; of 15 July 2021, *The Department for Communities in Northern Ireland*, C-709/20, EU:C:2021:602, of 15 September 2015, *Alimanovic*, C-67/14, EU:C:2015:597; of 25 February 2016, *García-Nieto and Others*, C-299/14, EU:C:2016:114; of 11 November 2014, *Dano and Others*, C-333/13, EU:C:2014:2358; of 29 April 2004, *Skalka*, C-160/02, EU:C:2004:269; of 20 June 1991, *Newton*, C-356/89, EU:C:1991:265; and of 12 October 1978, *Belbouab*, 10/78, EU:C:1978:181.

Provisions of national law and case-law relied on

Legge 8 agosto 1995, n. 335 – Riforma del sistema pensionistico obbligatorio e complementare (Law No 335 of 8 August 1995 reforming the compulsory and complementary pension scheme, ‘Law No 335/1995’): Article 3(6), which governs the social allowance, paid by the State (through the INPS, the appellant in the main proceedings), upon application, to persons over the age of 67 experiencing economic hardship because they have no income or because their income is below the maximum amount of that social allowance and who, by reason of old age, have reduced working capacity. The allowance is granted irrespective of whether the recipient has been a worker and is solely within the category of assistance (as the Constitutional Court made clear in its judgment No 137/2021).

In order to qualify for the social allowance, applicants must:

– if they are Italian nationals (or nationals of another EU Member State), have their permanent residence in Italy;

– if they are nationals of a third country (outside the EU),

(a) hold the long-term resident’s EU residence permit (formerly ‘residence permit’) as provided for in Article 9 of decreto legislativo 25 luglio 1998, no. 286 (Testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero) (Legislative Decree No 286 consolidating the provisions regulating immigration and the rules relating to the status of foreign nationals), of 25 July 1998, as amended pursuant to Directive 2003/109/EC. That requirement was laid down in Article 80(19) of legge 23 dicembre 2000, n. 388, recante «Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2001) (Law No 388 laying down provisions for drawing up the annual and multiannual budget of the State (Finance Law 2001) of 23 December 2000 (‘Law No 388/2000’);

(b) have resided legally for a continuous period of at least 10 years in the national territory. That requirement was laid down in Article 20(10) of decreto-legge 25 giugno 2008, n. 112 – Disposizioni urgenti per lo sviluppo economico, la semplificazione, la competitività, la stabilizzazione della finanza pubblica e la perequazione tributaria (Decree-Law No 112 of 25 June 2008 laying down urgent

measures for economic development, simplification, competitiveness, the stabilisation of public finances and fiscal balance), converted, with amendments, into legge 6 agosto 2008, n. 133 (Law No 133 of 6 August 2008) ('Decree-Law No 112/2008').

Costituzione della Repubblica italiana (Constitution of the Italian Republic): Articles 3 (principle of equality), 38 (right to social assistance for every citizen) and 117 (constraints in the constitution and deriving from EU law and international obligations in the exercise of legislative powers).

Succinct presentation of the facts and procedure and the essential arguments of the parties in the main proceedings

- 1 VM, a third-country national (from outside the EU) who only holds an EU residence permit for family reasons but does not have a long-term resident's EU residence permit, applied to the INPS for the social allowance provided for in Article 3(6) of Law No 335/1995. The INPS refused to grant the allowance.
- 2 At first instance, the refusal of the allowance was confirmed. However, on appeal, the Corte d'appello (Court of Appeal) granted VM's application, taking the view that, for the purposes of granting that allowance, the requirement of continuous residence for at least 10 years in the national territory (laid down in Article 20(10) of Decree-Law No 112/2008) had implicitly abolished the requirement to hold a long-term resident's EU residence permit (laid down in Article 80(19) of Law No 388/2000).
- 3 The INPS appealed against the appellate judgment before the Corte di Cassazione (Court of Cassation).
- 4 In support of its appeal on a point of law, the INPS first of all referred to the case-law of the Court of Cassation, under which both the above-mentioned conditions must be satisfied, since one does not replace the other but is additional to it.
- 5 In addition, the INPS observed that constitutional case-law had already confirmed the constitutional legitimacy of Article 80(19) of Law No 388/2000 and recognised that, within the limits permitted by EU law on the status of third-country nationals who are long-term residents, the legislature may accord certain benefits falling within the category of assistance solely to citizens and persons resident in Italy who are considered to be equivalent to citizens and who can demonstrate stable and active integration into the territory, in particular from the social and economic point of view (judgment of the Constitutional Court No 50/2019).
- 6 Finally, the INPS recalled the case-law of the European Union, and in particular the judgment of 14 November 2014, *Dano and Others*, C-333/13, according to which, under Article 70(4) of Regulation (EC) No 883/2004, special non-contributory cash benefits (such as the social allowance at issue) are to be

provided exclusively in the Member State in which the persons concerned reside, in accordance with its legislation. It follows that, in order to prevent nationals of other Member States from becoming an unreasonable burden on the social assistance system of the host Member State, ‘there is nothing to prevent the grant of such benefits to Union citizens who are not economically active from being made subject to the requirement that those citizens fulfil the conditions for obtaining a right of residence under Directive 2004/38 in the host Member State’. In that regard, reference is also made to the judgments of 15 September 2015, *Alimanovic*, C-67/14, and of 15 July 2021, *The Department for Communities in Northern Ireland*, C-709/20.

- 7 In short, according to the INPS it would be paradoxical, in the light of EU law and case-law which permit limitations on social assistance benefits intended to alleviate the risk of poverty for family members of EU Member State nationals who do not hold a long-term residence permit, to grant family members of workers who are nationals of third countries (outside the EU), such as the respondent VM, unconditional access to those benefits.
- 8 The respondent, VM, submits that in so far as it makes the grant of the social allowance subject to possession of a long-term resident’s EU residence permit, Article 80(19) of Law No 388/2000 is contrary to Directive 2011/98/EU.
- 9 In particular, in its judgment of 2 September 2021, *INPS* (childbirth and maternity allowances for holders of a single permit), C-350/20, the Court of Justice, ruling on a question referred for a preliminary ruling by the Constitutional Court on maternity allowances, held that Article 12(1) of Directive 2011/98/EU applies both to third-country nationals who have been admitted to a Member State to work and to third-country nationals admitted to a Member State for purposes other than to work and who are allowed to work and who hold a residence permit in accordance with Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals. The Court of Justice has also held that the principle of equal treatment set out in Article 12(1)(e) of that directive concerned benefits falling within the branches of social security defined 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.
- 10 In that regard, VM challenges the assertions made by the INPS that presuppose a distinction between social security and social assistance, arguing that such a distinction is not relevant for the purposes of defining the scope of the above-mentioned regulation, which also includes special non-contributory cash benefits. Furthermore, the classification, envisaged by the INPS, of the social allowance as a poverty support measure would run counter to the age requirement (67 years) that is a precondition for its grant; in VM’s view, that means that the allowance should be classified as an old-age benefit as referred to in Article 3(1) of Regulation (EC) No 883/2004.

- 11 In the context of the dispute, the Court of Cassation took the view that, although in its judgment No 50 of 2019 the Constitutional Court had already examined Article 80(19) of Law No 388/2000 as regards an alleged incompatibility with Article 3 of the Constitution (principle of equal treatment), and declared it lawful, the question of that article's constitutional legitimacy arises again in so far as it denies the social allowance to a third-country (non-EU) national who does not have a long-term resident's EU residence permit. The reason for that is that, in the meantime, the Court of Justice has made it clear in the above-mentioned judgment of 2 September 2021, *INPS* (childbirth and maternity allowances for holders of a single permit), C-350/20, that the principle of equal treatment in the access to benefits provided for in Regulation (EC) No 883/2004 does not concern only holders of a single work permit, but also applies to holders of a residence permit for purposes other than to work, who have been given access to the labour market in the host Member State. In that regard, the Court of Cassation considers that the reference in Article 12(1)(e) of Directive 2011/98/EU to Regulation (EC) No 883/2004 should not be limited solely to the sectors referred to in Article 3(1) of that regulation, but should also apply to the benefits referred to in Article 3(3), referring to the subsequent Article 70 and Annex X to that regulation, which also includes the Italian social allowance.
- 12 Consequently, with reference to Articles 3 and 11, the first paragraph of Article 38 and the first paragraph of Article 117 of the Constitution, that latter article in relation to Article 34 of the Charter of Fundamental Rights of the European Union and Article 12(1)(e) of Directive (EU) 2011/98, the Court of Cassation raised questions concerning the constitutional legitimacy of Article 80(19) of Law No 388/2000, 'in so far as it makes payment of the social allowance to third-country nationals subject to the possession of the (former) residence permit [currently, long-term resident's EU residence permit]'.
- 13 The Constitutional Court is now called upon to resolve the doubts as to constitutional legitimacy raised by the Court of Cassation in the proceedings before it.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 14 The Constitutional Court notes that the case before it concerns a question of the constitutional legitimacy of a provision of national law which, alongside Articles 3 and 38 of the Constitution, contains rules of primary and secondary EU law having direct effect in relation to access to social security benefits.
- 15 It considers that the answer to the question on the constitutional legitimacy of Article 80(19) of Law No 388/2000 requires, first of all, an answer to the question of whether the social allowance falls within the scope of the social security benefits in relation to which third-country nationals holding a residence permit for work purposes or which, in any event, permits them to work, are entitled to equal treatment under Article 12(1)(e) of Directive 2011/98/EU, read in the light of

Articles 3 and 70 of Regulation (EC) No 883/2004 and Regulation (EU) No 1231/2010.

- 16 The Constitutional Court has therefore decided to stay the proceedings and to ask the Court of Justice for an interpretation of those provisions of EU law.
- 17 The first part of the order for reference sets out the national legislation on the social allowance, which is granted, upon application, to persons who have no income or are destitute and who, because of their age, have reduced working capacity.
- 18 Italian nationals or nationals of an EU Member State residing permanently in Italy, and third-country nationals who simultaneously fulfil two conditions, namely that they hold a long-term resident's EU residence permit and that they have resided legally for a continuous period of at least 10 years in the national territory, may receive the allowance.
- 19 The case in the main proceedings concerns doubts as to the constitutional legitimacy of the legislative provision which introduced, for non-EU nationals, the requirement of a long-term resident's EU residence permit, namely Article 80(19) of Law No 388/2000 (see paragraph 11 above).
- 20 In that regard, the Constitutional Court confirms the principles it set out in a similar case, in judgment No 50/2019, in which it held that Article 80(19) of Law No 388/2000 is consistent with Articles 3 and 38 of the Constitution, concerning, respectively, the principle of equality and the right to social assistance to which every Italian citizen is entitled.
- 21 In the first place, the Constitutional Court reiterates that, in its view, there is no constitutional obligation to grant the social allowance to third-country nationals who do not have a long-term resident's residence permit.

The Constitution requires equality to be maintained between Italian and Union citizens, on the one hand, and third-country nationals, on the other, only as regards services and benefits that meet basic needs connected with the exercise of inviolable human rights. In those extreme and limited circumstances, the provision of such benefits is not a component of social assistance (which under Article 38 of the Constitution is solely accorded to 'citizens'), but a necessary instrument to guarantee inviolable human rights, which constitute an absolute minimum and are not called into question by the national provisions at issue.

However, beyond that absolute minimum, in view of the limited nature of the resources available, the legislature has discretion to graduate by means of restrictive criteria, or even to exclude, the access of non-EU nationals to supplementary social assistance benefits. In relation to those benefits, where it is citizenship itself, whether Italian or EU citizenship, that provides grounds for payment of the benefit to members of the community, the legislature may legitimately require non-EU nationals to satisfy additional requirements, which

are not manifestly unreasonable. Non-EU nationals may be required to prove they are stably and actively integrated, as is the case for the social allowance, where beneficiaries must satisfy the two above-mentioned conditions.

On the basis of those principles, the Constitutional Court considers that the requirement to hold a long-term resident's EU residence permit, laid down in Article 80(19) of Law No 388/2000, is lawful. That permit, which is issued for an indefinite period to those who have held a residence permit for at least five years, have an adequate income for the purposes of subsistence and accommodation, and who have passed a language proficiency test, presupposes a certain level of social and economic integration into the host State.

- 22 In the second place, the Constitutional Court states that, in its view, an obligation to grant the social allowance to third-country nationals who do not hold a long-term resident's residence permit cannot be derived from Article 12 of Directive 2011/98/EU. As has been seen, that is the legislative parameter in the light of which the Constitutional Court must verify, in the present proceedings, the constitutional legitimacy of the requirement at issue before the Court of Cassation.
- 23 In support of that assertion, the Constitutional Court analyses the subjective and objective scope of the right to equal treatment set out in Article 12 of Directive 2011/98/EU, while stating that the Court of Justice retains sole jurisdiction to provide a uniform interpretation in its answer to the question referred for a preliminary ruling.
- 24 Article 12(1) of Directive 2011/98/EU provides for the right to equal treatment, in relation to nationals of the Member State where they reside, of 'third-country workers as referred to in points (b) and (c) of Article 3(1) [of Directive 2011/98]' who have been admitted to that Member State 'for the purpose of work in accordance with Union or national law' (Article 3(1)(c)) or 'for purposes other than work in accordance with Union or national law, who are allowed to work and who hold a residence permit in accordance with Regulation (EC) No 1030/2002' (Article 3(1)(b)).
- 25 As regards the subjective scope of that right, the Constitutional Court observes that the wording of the provision clearly indicates that obtaining one of the residence permits it mentions is not sufficient for a non-EU national to benefit from the same regime as that granted to nationals of the host Member State, since it is expressly required that they be 'workers', that is to say that they work or have worked there.
- 26 As regards its objective scope, the Constitutional Court observes that the right applies in relation to the most significant aspects of the employment relationship, corresponding to various risks linked to the employment relationship, expressly listed in the above-mentioned Article 12(1). Those include, in point (e), 'branches of social security, as defined in Regulation (EC) No 883/2004', specifically in Article 3 of that regulation, entitled 'Matters covered'.

- 27 Article 3(1) of Regulation No 883/2004 lists, inter alia, the branches of social security relating to sickness, maternity and equivalent paternity benefits (which, it should be recalled, were examined in Case C-303/19 of the Court of Justice, cited by the respondent, VM, in support of her argument), invalidity and old-age benefits, benefits in respect of accidents at work and occupational diseases, and unemployment benefits. Article 3(3) provides that Regulation (EC) No 883/2004 ‘shall also apply to the special non-contributory cash benefits covered by Article 70’, while Article 3(5) expressly excludes social and medical assistance, among other things, from the regulation’s scope.

Article 70(1) defines ‘special non-contributory cash benefits’ (also known as ‘mixed benefits’) as those ‘provided under legislation which, because of its personal scope, objectives and/or conditions for entitlement, has characteristics both of the social security legislation referred to in Article 3(1) and of social assistance’. In particular, as clarified by the subsequent paragraph 2 of that article, it means those benefits which ‘(a) are intended to provide either: (i) supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in Article 3(1), and which guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned; or (ii) solely specific protection for the disabled (...), and (b) where the financing exclusively derives from compulsory taxation intended to cover general public expenditure and the conditions for providing and for calculating the benefits are not dependent on any contribution in respect of the beneficiary (...), and (c) are listed in Annex X’.

The above-mentioned Annex X, which lists the special non-contributory benefits included in the various Member State systems, expressly includes the Italian social allowance in question.

- 28 In view of the above, the Constitutional Court states that, in its opinion, the reference in Article 12(1)(e) of Directive 2011/98/EU to branches of social security, as defined in Regulation (EC) No 883/2004, in no way allows the principle of equal treatment to be extended automatically to all social benefits covered by that regulation, contrary to the submissions of the respondent, VM.
- 29 First of all, from a literal point of view, in identifying the benefits to which the right to equal treatment in question applies, Article 12(1)(e) of Directive 2011/98/EU indicates that the reference does not include all the benefits falling within the scope of Regulation (EC) No 883/2004, but only those which fall within the ‘branches of social security, as defined in [that regulation]’, which should be understood as being the specific branches of social security referred to in Article 3(1) of that regulation. Those do not include special non-contributory benefits, which are covered in Article 3(3).
- 30 In addition, Article 12 recognises the right to equal treatment only for third-country nationals who are ‘workers’ (see paragraph 25 above), whereas the special non-contributory benefits referred to in Article 70 of Regulation (EC)

No 883/2004 do not necessarily presuppose a direct or indirect link with an employment relationship and therefore with contributions made to the Treasury (see paragraph 27 above). Therefore, the wording of the relevant provisions shows that such special benefits clearly differ from a structural and functional point of view from the social security benefits intended to address the events referred to in Article 3(1) of Regulation (EC) No 883/2004. The reference in Article 12(1)(e) of Directive 2011/98/EU is to be understood as referring solely to those benefits.

- 31 In support of that interpretation of Article 12 of Directive 2011/98/EU, the Constitutional Court recalls that the Court of Justice has held that a special non-contributory cash benefit has a different purpose from that of social security benefits (judgment of 29 April 2004, *Skalka*, C-160/02, paragraph 25) and that it ‘has much in common with social assistance, particularly since the grant of the benefit provided for is not dependent on the completion of periods of employment’ (judgment of 20 June 1991, *Newton*, C-356/89, paragraph 13).
- 32 Moreover, precisely because of that difference in functions, Regulation (EC) No 883/2004 provides for two different systems:
- (a) for the social security benefits referred to in Article 3(1) of the Regulation, a system based on equality of treatment and the ability to export benefits, in accordance with Articles 4 and 7 of the regulation;
- (b) for special non-contributory cash benefits (including the social allowance at issue), Article 70(3) of the regulation provides that the principle of exportability does not apply, so that, pursuant to Article 70(4), they ‘shall be provided exclusively in the Member State in which the persons concerned reside, in accordance with its legislation (...) by and at the expense of the institution of the place of residence’. In so doing, the European legislature wished to make access to the benefits at issue conditional on the applicant’s having ties to the territory of the State required to bear the financial burden. As regards that provision, the Court has held that ‘there is nothing to prevent the grant of such benefits to Union citizens who are not economically active from being made subject to the requirement that those citizens fulfil the conditions for obtaining a right of residence under Directive 2004/38 in the host Member State’ (judgment of 11 November 2014, *Dano and Others*, C-333/13, paragraph 83; see also, to that effect, judgment of 25 February 2016, *García-Nieto and Others*, C-299/14, paragraph 52).
- 33 Consequently, where the person concerned is an EU citizen, the system in question means that, if the citizen is in a Member State other than the one of which he or she is a national, such residence can only be deemed to exist if the requirements for an EU residence permit for long-term residents in an EU Member State other than the Member State of origin are also met. For Union citizens, Directive 2004/38/EC and, in particular, Article 7(1) thereof are thus applicable. Pursuant to that article, in order to be able to reside on the territory of another Member State for a period of longer than three months, all Union citizens

must be workers or self-employed persons in the host Member State or have sufficient resources for themselves and their family members, including sickness insurance, not to become a burden on the social assistance system of the host Member State. Finally, under Article 16(1) of Directive 2004/38/EC, Union citizens acquire the right of permanent residence after residing legally for a continuous period of five years in the host Member State.

- 34 In the legal framework described, the Constitutional Court further observes that, in so far as Union citizens cannot, in the absence of such requirements, be granted special non-contributory cash benefits in a Member State other than that of which they are a national, Member States should not be required to grant such benefits to third-country nationals who do not demonstrate significant ties on their territory, as attested, first and foremost, by the existence of an employment relationship.
- 35 Moreover, the European legislation on the coordination of social security, originally designed only for Union citizens who move within the territory of the Union for work purposes, has been extended over time to third-country nationals who are lawfully resident in EU territory in order to pursue an occupation there, first by means of case-law (judgment of 12 October 1978, *Belbouab*, C-10/78) and then by the EU legislature.
- 36 With regard in particular to Regulation (EC) No 883/2004, the extension to third-country nationals was provided for in Regulation (EU) No 1231/2010. Pursuant to Article 1 of that regulation, the current social security coordination regime therefore applies both to nationals of EU Member States who move to the territory of the Union for the purpose of work and to third-country nationals residing legally in a Member State. Such persons cannot be accorded more extensive protection and must therefore, like nationals of Member States, prove that they have a contribution relationship with the social security system of the State from which the payment of benefits is sought.
- 37 The Constitutional Court concludes that, in its view, third-country nationals, such as VM in the present case, to whom Article 12(1)(e) of Directive 2011/98/EU applies, may receive the same treatment as nationals of the Member State in which they reside only if they are workers and only as regards benefits relating to the branches of social security listed in Article 3(1) of Regulation (EC) No 883/2004, whereas, in order to receive the special benefits referred to in Article 70 of that regulation – including the social allowance at issue – they must necessarily be subject to the conditions laid down by the EU coordination regulations and by the legislation of the host State.
- 38 However, since the uniform interpretation of EU law is a matter exclusively for the Court of Justice, the Constitutional Court stays the proceedings and refers the above-mentioned question to the Court of Justice for a preliminary ruling.