OPINION OF ADVOCATE GENERAL MENGOZZI

delivered on 8 November 2007 [1]

I — Introduction

1. By a decision of 17 October 2006, which was received by the Court on 6 November 2006, the Tribunal du travail de Bruxelles (Labour Court, Brussels), Belgium, referred a question to the Court for a preliminary ruling on the interpretation of 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. [2]

2. That question was raised in a dispute between Ms Gysen and a Belgian social security institution for self-employed workers regarding the calculation of the amount of allowances for dependent children which, under national legislation, that institution must pay to Ms Gysen for two of her three children.

II — Legislative background

A — *Community law*

3. Regulation No 259/68 is 'binding in its entirety and directly applicable in all Member States', pursuant to the second paragraph of Article 11 thereof.

4. Article 67(1) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') — as defined in Article 2 of Regulation No 259/68 and subsequently

1 — Original language: Italian.

2 — OJ, English Special Edition 1968 (I), p. 30.

amended — provides for officials to be paid three types of family allowance: the household allowance, the dependent child allowance and the education allowance.

5. Articles 1, 2 and 3 of Annex VII to the Staff Regulations lay down, in particular, the conditions governing the award of each of these allowances and the relevant amount.

6. Article 67(2) states that '[o]fficials in receipt of family allowances specified in this Article shall declare allowances of like nature paid from other sources', which 'shall be deducted from those paid under Articles 1, 2 and 3 of Annex VII'.

7. Under Articles 20(2) and 21 of the Conditions of Employment of Other Servants of the Communities ('the CEOS') — as defined in Article 3 of Regulation No 259/68 and subsequently amended — Article 67 of the Staff Regulations and Articles 1, 2 and 3 of Annex VII thereto apply by analogy to temporary staff.

B — *The national legislation*

8. Under the arrangements set up under the Belgian Royal Decree of 8 April 1976 establishing the family allowances scheme for self-employed workers [3] ('the Royal Decree of 8 April 1976'), the amount of the dependent child allowance depends on the position (the 'ranking') of each child receiving the allowance in the succession of the worker's children receiving allowances. To put it more precisely, the amount increases according to the number of beneficiary children: hence it is higher for the second child than for the first and higher still for the third and subsequent children.

9. However, the first subparagraph of Article 16(1) of the Royal Decree of 8 April 1976, as amended with retroactive effect from 1 July 2001 by Article 4 of the Royal Decree of 7 September 2003, [4] provides that:

'For the purposes of Articles 17, 19, 20 and 20a, the ranking is determined by the chronological order of the births of the children receiving [allowances] under this Decree, the consolidated statutes on family allow-

3 — *Moniteur Belge/Belgisch Staatsblad* of 6 May 1976, p. 5952. The decree has been amended many times over the intervening years.

4 — *Moniteur Belge/Belgisch Staatsblad* of 1 October 2003, p. 48215.

ances for salaried workers, the Royal Decree of 26 March 1965 on family allowances granted to certain categories of salaried State employees, the Law of 20 July 1971 establishing guaranteed family benefits and the international social security conventions in force in Belgium'. [5]

III — Facts and the question referred for a preliminary ruling

10. Ms Gysen, a Belgian national, performs self-employed professional activities in Belgium.

11. She is the mother of three children: Adrien, born in 1989 during her first marriage, which ended in divorce in 1993; and Augustin and Elise, born in 1994 and 1996 respectively in the course of a subsequent marriage, which also ended in divorce in 2000.

12. Ms Gysen's first husband, the father of Adrien, entered the service of the Commission of the European Communities as a temporary agent on 1 December 2001. From that date onwards, Ms Gysen, who was granted parental authority over Adrien by a court decision, has been receiving from the Commission, in the name of and on behalf of Adrien's father, the full allowance payable for Adrien, as a dependent child, under the Staff Regulations and the CEOS.

13. As regards Ms Gysen's two younger children, under a court decision the family allowances paid by Groupe S — Caisse d'Assurances Sociales pour Indépendants ('the Caisse') are also received by Ms Gysen, who exercises parental authority over these two children jointly with her second husband.

14. By letter of 22 February 2002, Ms Gysen informed the Caisse that from 1 December 2001 she had been receiving allowances for Adrien from the Commission.

15. The Caisse therefore ceased to pay Ms Gysen allowances for her son Adrien but continued to pay her the allowances for Augustin and Elise as second and third children.

16. From March 2003 onwards, however, the Caisse deducted from the monthly family allowances paid to Ms Gysen a total of EUR 2 284.84, being the difference between

5 — Unofficial translation of the original text in French.

the allowances already paid for Augustin and Elise as second and third children and the allowances which, according to the Caisse, should have been paid for them as first and second children. From then onwards the Caisse paid allowances to Ms Gysen for Augustin and Elise as first and second children, as it considered that children receiving family allowances from the European Communities cannot be taken into account for the purposes of determining the group of beneficiary children referred to in the first subparagraph of Article 16(1) of the Royal Decree of 8 April 1976.

17. Ms Gysen accordingly brought an action before the Tribunal du Travail de Bruxelles for a ruling that Augustin and Elise should be treated as second and third children for the purposes of Article 16(1) of the Royal Decree of 8 April 1976 and an order directing the Caisse to reimburse the sums withheld from the allowances paid to her from March 2003 onwards and to pay arrears corresponding to the difference between the amounts paid and those to which she was entitled for these children.

18. That court decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'May, or must, Article 67(1) of Regulation [No 259/68] and Annex VII thereto, entitled "Remuneration …", Section 1: Family allowances, which comprise

(a) household allowance;

(b) dependent child allowance;

(c) education allowance;

be regarded as constituting what the national rules in question describe as an "… international social security convention in force in Belgium"?'

IV — Legal analysis

19. In order to resolve the dispute in the main proceedings, the referring court must establish whether, pursuant to the Royal Decree of 8 April 1976, children for whom the Community institutions pay family allowances under the Staff Regulations and the CEOS must be taken into account for

the purposes of determining the group of children of a self-employed worker receiving family allowances, an exercise that is necessary to ascertain the ranking of each child and hence the amount of allowance to be paid.

20. The parties to the main proceedings presented arguments before the referring court regarding the scope of the concept of international social security convention in force in Belgium, referred to in the first subparagraph of Article 16(1) of the abovementioned Royal Decree. As is apparent from the order for reference, the reference to 'international social security conventions in force in Belgium' was added to that provision by the Royal Decree of 7 September 2003 in the wake of the judgment of the Belgian Cour d'Arbitrage [6] No 106/2001 [7] of 13 July 2001, which held that Article 42 of the Belgian statutes on family allowances for salaried workers, consolidated by the Royal Decree of 19 December 1939, [8] was contrary to Articles 10 and 11 of the Belgian Constitution on the principles of equal treatment and non-discrimination, 'in that it permit[ted] only children receiving that benefit under the abovementioned consolidated statutes to be taken into account for the purposes of calculating the ranking that determines the amount of family allowances payable, without allowing account to be taken of a child receiving family allowances under the legislation of a Member State of the European Union declared to be applicable by Community law'. [9]

21. In the main proceedings Ms Gysen maintained that the concept of 'international social security conventions in force in Belgium' within the meaning of the first subparagraph of Article 16(1) of the Royal Decree of 8 April 1976 includes binding provisions drawn up by an institution governed by public international law, such as those contained in the Staff Regulations.

22. The Caisse, by contrast, maintained that the extension of the scope of the abovementioned provision by the Royal Decree of 7 September 2003 applied only to countries with which Belgium has concluded multilateral or bilateral international social security conventions. It pointed out that there is no convention between Belgium and the European institutions or international institutions which pay family allowances to their staff.

6 — On 7 May 2007, by an amendment to the Belgian Constitution, the name of the Cour d'Arbitrage was changed to that of Cour Constitutionnelle/Grondwettelijk Hof/Verfassungsgerichtshof (Constitutional Court) (*Moniteur Belge/Belgisch Staatsblad* of 8 May 2007, pp. 25101 and 25102).

7 — *Moniteur Belge/Belgisch Staatsblad* of 13 November 2001, p. 38689.

8 — *Moniteur Belge/Belgisch Staatsblad* of 22 December 1939, p. 8702.

9 — Unofficial translation of the operative part of the judgment in question.

23. The Caisse noted that although the Treaties establishing the European Communities are international conventions in force in Belgium, and certain legal rules established by those international organisations are directly applicable in the Member States, the Staff Regulations, while conferring rights on Community officials which they may enforce against their employer, are not directly and immediately applicable in the Belgian legal system.

24. The order for reference then reports the opinion delivered by the Ministère Public (Public Prosecutor) in the main proceedings, according to which Regulation No 259/68 must be considered to fall within the concept of an international social security convention in force in Belgium for the purposes of the first subparagraph of Article 16(1) of the Royal Decree of 8 April 1976, since it cites as its legal basis two international treaties ratified by Belgium — the EC Treaty and the Protocol on the privileges and immunities of the European Communities of 8 April 1965 [10] — and since, under Article 11 thereof, it is binding in its entirety and directly applicable in all Member States.

25. After reporting the positions of the parties and of the Ministère Public (as set out above) and having noted that where the Royal Decree of 8 April 1976 refers to 'international social security conventions in force in Belgium', it is worded differently from other national provisions — which in the distinct field of pensions make explicit reference to the 'staff regulations of an institution governed by international public law' — the referring court formulates the question referred for a preliminary ruling without setting out further considerations.

26. It is clear that the question referred for a preliminary ruling, as formulated in the order for reference, would not fall within the jurisdiction of the Court. In asking whether the Staff Regulations and Annex VII thereto constitute an 'international social security convention in force in Belgium' within the meaning of the first subparagraph of Article 16(1) of the Royal Decree of 8 April 1976, the referring court is seeking from the Court an interpretation of a provision of Belgian law. [11] As is well known, under the system of judicial cooperation established by Article 234 EC, the interpretation of national rules is a matter for the national courts and not for the Court of Justice. [12]

27. Thus it is for the referring court itself to ascertain what is to be understood by 'international social security convention in force in Belgium' within the meaning of the

10 — OJ 1967 L 152, p. 13.

11 — It should be noted that although the text of that national provision is not reproduced in the order for reference but is contained in the file relating to the national proceedings sent with the reference for a preliminary ruling, the order for reference nevertheless makes it possible to understand the content of that provision.

12 — Case C-37/92 *Vanacker and Lesage* [1993] ECR I-4947, paragraph 7, and Case C-511/03 *Ten Kate Holding Musselkanaal and Others* [2005] ECR I-8979, paragraph 25 and the case-law cited.

national provision cited. The application of that provision and, accordingly, the assessment whether the Staff Regulations and the CEOS fall within the above concept, are also reserved to the jurisdiction of the referring court. The Court of Justice may merely provide clarification as to the legal nature of those acts in order to enable the referring court to make that assessment.

28. Such clarification, even though it does not raise doubts or complications, is all the more appropriate in the light of certain statements made before the referring court. I note in particular that the Caisse contended in the course of the main proceedings that the provisions of the Staff Regulations, while granting Community officials rights that they can enforce against their employer, are not directly and immediately applicable in the Belgian legal system.

29. I therefore consider that the question submitted by the referring court may be reformulated in such a way as to seek clarification concerning the legal nature of the Staff Regulations and the CEOS and their possible direct applicability in the Belgian legal system.

30. In this regard it should first be observed that the adoption of the Staff Regulations and the CEOS constitutes implementation by the Council of the provision of the EC Treaty (now Article 283 EC) that empowers that institution to lay down, acting on a proposal from the Commission and after consulting the other institutions concerned, the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities. [13] Specific provisions of the Staff Regulations and the CEOS are, in turn, the means of implementing certain rules contained in the Protocol on the Privileges and Immunities of the European Communities, in particular Articles 7 and 12 to 16 thereof, and since the Protocol is annexed to the Treaties establishing the European Community and the European Atomic Energy Community, it is of equal status and rank to those treaties.

31. In addition, it should be noted that, as the Court has already had occasion to point out, the Staff Regulations and the CEOS were adopted by means of Regulation No 259/68 and that, by virtue of the second paragraph of Article 189 of the EEC Treaty (now the second paragraph of Article 249 EC), that regulation has general application, is binding in its entirety and is directly applicable in all Member States, [14] as moreover is stated in

13 — More specifically, Regulation No 259/68 was adopted on the basis of Article 24(1) of the Treaty establishing a Single Council and a Single Commission of the European Communities (OJ 1967, 152, p. 2), which repealed the existing Article 212 of the EEC Treaty, the wording of which was incorporated into Article 283 EC.

14 — Case 137/80 *Commission* v *Belgium* [1981] ECR 2393, paragraph 7, and Case 186/85 *Commission* v *Belgium* [1987] ECR 2029, paragraph 21.

Article 11 of the regulation itself. According to the Court, it follows that, in addition to having effects within the Community administration, the Staff Regulations and the CEOS are also binding on Member States wherever their cooperation is necessary in order to give effect to those measures. [15]

32. For example, the Court — noting that Article 67(2) of the Staff Regulations makes it possible to resolve conflicts between the Community scheme and the various national schemes, as the family allowances provided for by the Staff Regulations are paid to those entitled to them only in so far as they exceed the amount of the comparable allowances paid under a scheme established by the legislation of a Member State — has observed that 'since it is based on Article 67(2) itself, that is to say, on a provision contained in a regulation adopted pursuant to the second paragraph of Article 189 of the EEC Treaty, the supplementary effect of allowances payable under the Staff Regulations is binding on the Member States and cannot be disregarded by national legislation'. [16]

33. Thus the Staff Regulations and the CEOS are binding on all the Member States, including Belgium. Moreover, it cannot be maintained that such a binding effect on the Belgian authorities does not exist in the present case on the ground that the Court has also stated that Article 67(2) of the Staff Regulations does not impose 'any obligations on the Member States in the sphere of family allowances where the spouse of an official, retired official or other Community servant carries on within the territory of a Member State an activity as a self-employed person'. [17]

34. That observation by the Court simply means that a Member State remains free to refuse family allowances provided for under its own laws, citing in support of that view the possibility for those entitled to them to receive, for the same child, the family allowances paid under the Staff Regulations and the CEOS where the spouse of the official or servant of the Communities carries on an activity as a self-employed person within its territory. [18] Indeed, as the Court has observed, 'the allowances of like nature which, according to the aforesaid provision, must be deducted from the family allowances payable under the Staff Regulations and thus relieve the Community institutions of the obligation to pay the last-mentioned allowances, are only those paid in connection with paid employment'. [19] The inapplicability of Article 67(2) of the Staff Regulations in those situations does not, however, in any way diminish the binding nature and direct

15 — Case 137/80 *Commission* v *Belgium*, cited above, paragraph 8, and Case 186/85 *Commission* v *Belgium*, cited above, paragraph 21.

16 — Case 186/85 *Commission* v *Belgium*, cited above, paragraph 23.

17 — Ibid., paragraph 34.

18 — Ibid., paragraph 33.

19 — Ibid.

applicability of the Staff Regulations and the CEOS in all the Member States, including Belgium.

35. On that premise, the question referred to the Court for a preliminary ruling could be answered by simply pointing out that the Staff Regulations and the CEOS approved by Community regulation have general application, are binding in their entirety and are directly applicable in all the Member States.

36. However, the Commission, which is the only party other than Ms Gysen to have submitted written observations in these proceedings for a preliminary ruling, suggests rewording the question in far wider terms than those I have indicated in paragraph 29 above. It proposes that the referring court should be regarded as wishing in essence to know 'whether Community law must be interpreted as meaning that it precludes national legislation on the basis of which, where family allowances to which a self-employed worker is entitled are paid entirely by the Community scheme established under the [Staff Regulations], the child receiving such allowances may no longer be taken into account for determining the ranking of the children of that worker, which affects the amount of family allowances [to be paid for that person's other children]'.

37. Stated in these terms, the question referred for a preliminary ruling would not be directed simply at obtaining clarification of the legal status of the Staff Regulations and the CEOS in order to enable the referring court to ascertain whether those acts fall within the concept of 'international social security conventions in force in Belgium', the scope of which that court must define under domestic law.

38. Instead, or in addition, the question would turn on whether Community law, as a higher ranking legal source, places limits on the interpretation and application of the domestic provision in question. It would therefore be necessary to identify — having regard to the national court's obligation to interpret the domestic provision as far as possible in conformity with Community law and even, in some circumstances, to disapply it where such a concordant interpretation is not possible — any requirements of Community law that must guide the referring court in defining the scope of that concept of domestic law and, where appropriate, in assessing whether the provision containing that concept is compatible with Community law in the event that the concept may not be construed as covering the Staff Regulations and the CEOS.

39. It has to be asked whether the reformulation of the question as suggested by the Commission, by entailing a substantive

widening of the subject-matter of the question from the referring court, does not go beyond the bounds of cooperation between the Court of Justice and national courts as laid down by the scheme established by Article 234 EC.

40. I recall in this regard that, according to settled case-law, it is for the Court, when faced with questions which are not framed in an appropriate manner or which go beyond its jurisdiction under Article 234 EC, to extract from all the information provided by the national court, in particular from the grounds of the order for reference, the points of Community law which require interpretation, having regard to the subject-matter of the dispute. [20]

41. In order to provide a satisfactory answer to a national court which has referred a question to it, the Court of Justice may deem it necessary to consider provisions of Community law to which the national court has not referred in the text of its question. [21] This has occurred both where the question referred to the Court for a preliminary ruling made reference to provisions of Community law that were not relevant to the situation which gave rise to the case before the referring court [22] and where the question did not mention any specific provision of Community law but referred to the EC Treaty or to Community law as a whole. [23]

42. The case-law provides no shortage of examples in which the Court has broadened the subject-matter of the question referred to it for a preliminary ruling by deciding on the validity of a provision of Community law when the question had been formulated by the national court in a way that called on the Court to carry out a merely interpretative exercise. [24]

43. The Court therefore appears to allow itself considerable leeway to identify the points of Community law which require interpretation for the purposes of resolving the domestic case, in accordance with the need to provide a 'satisfactory answer' to the referring court and in a spirit of full cooperation with that court. In judicial cooperation under Article 234 EC — which requires the national court and the Court of

20 — See, ex multis, Case 35/85 *Tissier* [1986] ECR 1207, paragraph 9, and Case C-107/98 *Teckal* [1999] ECR I-8121, paragraph 34.

21 — *Tissier*, paragraph 9; Case C-315/92 *Verband Sozialer Wettbewerb* [1994] ECR I-317, paragraph 7; and Joined Cases C-228/01 and C-289/01 *Bourrasse and Perchicot* [2002] ECR I-10213, paragraph 33.

22 — By way of example, see Case C-315/88 *Bagli Pennacchiotti* [1990] ECR I-1323; Case C-315/93 *Flip and Verdegem* [1995] ECR I-913; *Teckal*; and *Bourrasse and Perchicot*.

23 — By way of example, see Case 10/71 *Hein, née Müller, and Others* [1971] ECR 723; Case 251/83 *Haug-Adrion* [1984] ECR 4277; *Tissier*; Case C-235/90 *Aliments Morvan* [1991] ECR I-5419; and Case C-168/95 *Arcaro* [1996] ECR I-4705.

24 — By way of example, see Case 62/76 *Strehl* [1977] ECR 211; Case 145/79 *Roquette Frères* [1980] ECR 2917; and Case C-37/89 *Weiser* [1990] ECR I-2395.

Justice, both keeping within their respective jurisdiction, and with the aim of ensuring that Community law is applied in a unified manner, to make direct and complementary contributions to the working out of a decision — purely formal requirements which would only prolong the procedure are to be excluded. [25] The wide powers which the Court reserves to itself to reformulate the questions referred for a preliminary ruling, and even to broaden their subject-matter, therefore also rest on reasons of economy of procedure, in that they make it possible to avoid the otherwise probable repetition of the request for a preliminary ruling.

44. Of course, although the reformulation of the question referred by the Tribunal du travail de Bruxelles along the lines suggested by the Commission does not appear to exceed the broad limits of the Court's jurisdiction to give a preliminary ruling as defined by case-law, that does not mean that the Court is obliged to adopt it.

45. Although the Court is required, under Articles 10 EC and 234 EC, to answer questions relating to the interpretation of Community law referred by national courts which meet the conditions for admissibility laid down in case-law, it cannot be held that it is bound to reply to questions that have been raised not by those courts but, in pleadings before the Court of Justice, by persons participating in the proceedings for a preliminary ruling, that is to say, in accordance with Article 23 of the Statute of the Court of Justice, the parties to the dispute in the main proceedings, the Member States, the Commission and, where appropriate, the European Parliament, the Council and the European Central Bank, and, where one of the fields of application of the Agreement on the European Economic Area is concerned, the States, other than the Member States, which are parties to that Agreement, and the Surveillance Authority referred to in that Agreement.

46. The Court's power to provide the referring court with an interpretation of Community law that goes beyond that requested by the national court must be exercised with care and in accordance with considerations of appropriateness.

47. In the present case, I observe that the question raised by the Commission goes well beyond the concerns of the referring court. Nowhere in the order for reference is it evident that the Tribunal du travail de Bruxelles entertains doubts as to the compatibility of the first subparagraph of Article 16(1) of the Royal Decree of 8 April 1976 — the interpretation of which it has yet to sketch

25 — Case 16/65 *Schwarze* [1965] ECR 877, in particular p. 886.

out — with provisions or principles of Community law. We are therefore in a very different situation from that in which a referring court wonders whether a given national rule, which it interprets, is compatible with a given provision of Community law and in which the Court replies, *having regard to the substance of the issue raised by the referring court*, that it finds that provision inapplicable to the case in point and provides an interpretation of a different provision of Community law applicable to the case in point and to which that rule is contrary. [26]

48. Moreover, the reformulation of the question suggested by the Commission does not seem necessary to safeguard the usefulness of the reference for a preliminary ruling. As we have seen, even if the question asked by the referring court is inappropriately formulated, it can be rephrased in the terms I have indicated in paragraph 29 above in order nevertheless to ensure a useful reply from the Court.

49. Furthermore, I consider it inappropriate for the Court to scour Community law for a provision that may preclude national legislation such as that described in the wording of the question proposed by the Commission. The Court should at most examine the scope of the only Community provision actually raised by the Commission in its written observations, namely Article 10 EC. I take that view by analogy with the recent trend in case-law, which, as far as the admissibility of questions referred for a preliminary ruling is concerned, insists particularly on requiring the national court to state the precise reasons which caused it to question itself as to the interpretation of Community law and to consider that it was necessary to refer questions to the Court for a preliminary ruling and to give at least some explanation of the reasons for the choice of the Community provisions which it requires to be interpreted and of the link it establishes between those provisions and the national legislation applicable to the dispute before it. [27]

50. Finally, I would point out that the Court has a duty to ensure that the possibility for the interested parties within the meaning of Article 23 of the Statute of the Court of Justice to submit written observations is safeguarded, bearing in mind that, before those

26 — See, for example, Case C-293/03 *My* [2004] ECR I-12013.

27 — Order in Case C-116/00 *Laguillaumie* [2000] ECR I-4979, paragraph 16; Order in Case C-425/03 *Provvidenza Regio*, not published in the ECR, paragraph 9; Order in Case C-116/05 *Dhumeaux and Others*, not published in the ECR, paragraph 21; and Order in Case C-166/06 *Eurodomus*, not published in the ECR, paragraphs 7 and 8. In the second of these orders on inadmissibility it is stated, in particular, that the referring court had not stated the provisions of Community law of which it was seeking an interpretation (paragraph 12).

observations are lodged, only the orders for reference are notified to them. [28]

51. Precisely for the reasons indicated in paragraph 47 above, the possibility for the interested parties within the meaning of Article 23 of the Statute of the Court of Justice to submit written observations on the possible existence of provisions of Community law precluding a national provision such as the first subparagraph of Article 16(1) of the Royal Decree of 8 April 1976 (interpreted according to the wishes of the Caisse) was, although not entirely excluded, nevertheless very theoretical. It is true that such parties — to whom the Commission's written observations were notified in accordance with Article 104(4) of the Rules of Procedure of the Court — could have stated their views in that regard by applying for a hearing to be held and thus presenting oral observations. However, it should not be forgotten that it is only the order for reference that is notified to the parties referred to in Article 23 of the Statute of the Court of Justice (in particular the Member States, accompanied by a translation into the official language of each State [29]), whereas the written observations submitted by the Commission in these proceedings for a preliminary ruling were notified to the parties only in their original version in the language of the proceedings (French). Furthermore, it is also the possibility of submitting *written* observations that must be safeguarded.

52. A broadening of the subject-matter of the question for a preliminary ruling along the lines suggested by the Commission would therefore appear to require that the Member States and the parties to the main proceedings be given the opportunity to make written submissions on the question raised by the Commission. It seems particularly important, in my view, that above all the Belgian Government be invited to submit observations, since that question could indirectly cast doubt on the compatibility of a provision of Belgian legislation with Community law. It is of course still possible to obtain the observations in question, but this would delay the present proceedings.

53. In my opinion, the above considerations make it inadvisable to broaden the scope of the examination to be carried out by the Court in the present proceedings to include the question suggested by the Commission. The subject-matter of the question for a preliminary ruling should therefore, in my view, remain within the limits I have sketched out in paragraph 29 above. Moreover, I would point out that the Commission can at any time refer to the Court the question of the compatibility of the first subparagraph of Article 16(1) of the Royal

28 — Joined Cases 141/81 to 143/81 *Holdijk and Others* [1982] ECR 1299, paragraph 6; Case C-207/01 *Altair Chimica* [2003] ECR I-8875, paragraph 25; Order in Case C-458/93 *Saddik* [1995] ECR I-511, paragraph 13; and Order in *Laguillaumie*, paragraph 14.

29 — See the Order in *Laguillaumie*, paragraph 24.

Decree of 8 April 1976 with Community law by bringing infringement proceedings under Article 226 EC.

54. It is therefore only in the alternative and in cursory terms that I shall now proceed to examine the substance of the question whether Article 10 EC precludes national legislation under which, in the context of the payment by the competent national body of family allowances for the dependent children of a self-employed worker, the child of that worker who receives family allowances paid under the Staff Regulations or the CEOS is not taken into account for the purposes of determining the ranking of that worker's other children, which under that legislation influences the amount of the family allowances payable for those children.

55. The Commission gave an affirmative reply to that question, relying on the precedent established by the *My* judgment, [30] relating to national legislation under which the competent pension body was not allowed to take into account the years of employment completed in the service of a Community institution for the purposes of recognising entitlement to an early retirement pension under the national scheme.

56. In *My*, the Court observed that Article 10 EC requires the Member States to facilitate the achievement of the Community's tasks and in fact held that that article, read in conjunction with the Staff Regulations, prohibited such national legislation. [31]

57. However, I am bound to note that the Court reached that conclusion after finding that such national legislation 'is likely to impede and therefore to discourage employment within an institution of the European Union, inasmuch as, by accepting employment with such an institution, a worker who was formerly a member of a national pension scheme risks losing the right to benefit under that scheme from an old-age pension to which he would have been entitled had he not accepted that employment'. [32]

58. In considering that the national legislation in question was contrary to Article 10 EC, albeit read in conjunction with the Staff Regulations, the Court thus attached importance to the fact that that legislation could make it more difficult for the

30 — Cited above.

31 — Ibid., paragraphs 48 and 49.

32 — Ibid., paragraph 47.

Community to recruit national employees with a certain length of service, thereby impeding the functioning of the Community institutions.

59. The Court had adopted a similar approach previously in *Tither*[33], which concerned a national scheme aimed at subsidising the purchase and improvement of dwellings, the benefits of which (subsidies on the interest paid on mortgage loans) were denied to those who performed activities for which they received tax-exempt remuneration under a special exemption or immunity, and were thus denied to employees of the Communities. The Court had been asked by the referring court, in particular, whether Article 5 of the EEC Treaty (now Article 10 EC) obliged the Member State involved to grant the benefit also to such persons if they met the other conditions laid down by the scheme in question. Recalling that the cited provision 'prohibits Member States, inter alia, from adopting measures which are likely to impede the functioning of the Community institutions', the Court observed that although legislation such as the scheme in question could 'have the effect of depriving officials and servants of the Communities of a financial advantage which they would enjoy if they did not have that status', it did not appear that the scheme was 'likely to dissuade certain persons from entering the service of the Communities, or to induce them to quit the employment that they carry on there', that is to say 'of such a nature as to impede the functioning of the Community institutions'. The Court therefore concluded that Article 5 of the EEC Treaty did not preclude Member States from denying to officials or servants of the Communities a benefit such as that provided under the national scheme that was the subject of the main proceedings.

60. Returning now to the present proceedings for a preliminary ruling, it seems difficult to maintain that a provision such as that set out in the first subparagraph of Article 16(1) of the Royal Decree of 8 April 1976 — if interpreted as meaning that the children of a self-employed worker receiving family allowances under the Staff Regulations or the CEOS may not be taken into account in the context defined by that provision — is likely to dissuade certain persons from entering the service of the Communities, or to induce them to quit the employment that they carry on there. The Commission itself notes, with reference to the case in point, that the Belgian provision does not cause any loss to the Community servant in question (the first husband of Ms Gysen and father of Adrien), as it simply has the effect of reducing the amount of the family

33 — Case C-333/88 *Tither* [1990] ECR I-1133.

allowances that the Caisse must pay to his former wife for Augustin and Elise, her children by her second husband, who is not an official or servant of the Community. [34] Moreover, even if one wishes to consider that that reduction has an impact on the resources that Ms Gysen can mobilise to meet the cost of maintaining her first child and that, accordingly, it ultimately affects the extension of the obligations of that child's father — a servant of the Community — in terms of his contribution to those costs, such an effect would be too indirect and marginal to have the effect of dissuasion or inducement mentioned above.

61. Admittedly, the Commission rightly points out that application of the Belgian provision — interpreted as indicated in the preceding paragraph — would mean that, solely because Adrien's father is employed by a Community institution, Ms Gysen and her children Augustin and Elise would be treated less favourably than if Adrien's father did not hold that position. [35] In the light of the criterion for interpretation that can be deduced from *Tither* and *My*, that disparity of treatment does not, in my opinion, constitute an infringement by the Belgian State of the duty of sincere cooperation with the Community institutions enshrined in Article 10 EC.

62. It is hardly necessary to add (since it goes beyond the limits of the examination I have proposed in points 29 and 53 above) that such a disparity of treatment cannot be criticised by invoking the principle of equal treatment as a general principle of Community law or the specific expressions thereof, in particular Article 12 EC (prohibition of discrimination on grounds of nationality) or Article 7(2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community [36] (under which a worker who is a national of a Member State employed in the territory of another Member State 'shall enjoy the same social and tax advantages as national workers'). The case-file does not contain any information on the basis of which it can be held that the situation in the present case falls within the scope of Community law rather than being purely internal to the Belgian State.

34 — Written observations of the Commission, paragraphs 37 and 38.

35 — Ibid., paragraph 40.

36 — OJ 1968 L 257, p. 2.

V — Conclusions

63. In the light of the foregoing considerations, I suggest that the Court reply in the following terms to the question referred for a preliminary ruling by the Tribunal du travail de Bruxelles:

'The Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities, approved by Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968, have general application and are binding in their entirety and directly applicable in all Member States.

It is for the referring court, which has jurisdiction to interpret and apply national law, to determine whether, in the light of the abovementioned characteristics, those acts constitute an 'international social security convention in force in Belgium' within the meaning of the national provision at issue in the main proceedings.'