Reports of Cases

OPINION OF ADVOCATE GENERAL
MENGOZZI
delivered on 6 December 2016 [1]

Case C-690/15

Wenceslas de Lobkowicz
v
Ministère des Finances et des Comptes publics

(Request for a preliminary ruling from the cour administrative d'appel de Douai (Administrative Court of Appeal, Douai, France))

(Reference for a preliminary ruling — Freedom of movement for workers — Officials of the European Union — Compulsory affiliation to the social security scheme of the EU institutions — Funding of national social security benefits — Real estate income — Liability — General social contribution (CSG) — Social levy — Additional contributions))

I – Introduction

1. Does EU law preclude officials of the European Union from being subject to social contributions and levies in the Member State in which they are resident for tax purposes in respect of real estate income which they receive in that Member State?

2. That, in short, is the question asked by the cour administrative d'appel de Douai (Administrative Court of Appeal, Douai, France) in this case.

3. The present request for a preliminary ruling was made in the course of a dispute between Mr Wenceslas de Lobkowicz, a former official of the European Commission who retired in 2016, and the French Ministère des Finances et des Comptes publics (Ministry of Finance and Public Accounts) concerning the question of Mr de Lobkowicz's liability to pay social contributions and levies for the years 2008 to 2011 imposed on real estate income which he received in France.

4. As is clear from the statement of reasons for the request for a preliminary ruling, this request is made in the wake of the judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123), in which the Court of Justice held, in essence, that a worker of Dutch nationality, resident for tax purposes in France and falling within the scope of application of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community [2] could not be subject in France to social contributions and levies, in part identical to and in part similar to those at issue in the present case, imposed on the income from his assets.

1 — Original language: French.

2 — In the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), as amended by Council Regulation (EC) No 1606/98 of 29 June 1998 (OJ 1998 L 209, p. 1).

5. The referring court therefore asks the Court, in substance, to determine whether the approach in the judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123) may be transposed to the situation of a European Union official who, it is common ground, does not fall within the scope of Regulation No 1408/71.

II – Legal framework

A – *EU law*

6. Pursuant to Article 12 of the Protocol (No 7) on the Privileges and Immunities of the European Union, annexed to the EU, FEU and EAEC Treaties ('the Protocol'), officials and other servants of the Union are liable to a tax for the benefit of the Union on salaries, wages and emoluments paid to them by the Union and are exempt from national taxes on salaries, wages and emoluments paid by the Union.

7. The first paragraph of Article 13 of the Protocol states that, in the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Member States of the Union, officials and other servants of the Union who, solely by reason of the performance of their duties in the service of the Union, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Union are to be regarded as having maintained their domicile in the latter country.

8. Article 14 of the Protocol provides that the scheme of social security benefits for officials and other servants of the Union is to be laid down by regulation.

9. 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,[3] as amended by Council Regulation (EU) No 1240/2010 of 20 December 2010[4] ('the Staff Regulations') provides, inter alia, that officials are to contribute to the social security and pension schemes common to the EU institutions.

10. Chapter 2 of Title V of the Staff Regulations, entitled 'Social Security Benefits', sets out, in Articles 72 to 84, the contribution, expressed as a percentage of basic salary, which officials must make to the funding of the various contingencies covered by the common schemes. That chapter of the Staff Regulations lists the social security and retirement benefits enjoyed by officials and members of their families.

11. Article 4 of Regulation No 1408/71 provides that that regulation applies to all legislation concerning the branches of social security relating to sickness and maternity benefits, invalidity benefits, including those intended for the maintenance or improvement of earning capacity, old-age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, death grants, unemployment benefits and family benefits.

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

4 — OJ 2010 L 338, p. 7.

12. Article 13(1) of Regulation No 1408/71 states that, subject to Articles 14c and 14f, persons to whom the regulation applies are to be subject to the legislation of a single Member State only. Article 13(2)(a) of Regulation No 1408/71 states that, subject to Articles 14 to 17, persons employed in the territory of one Member State are to be subject to the legislation of that State even if they reside in the territory of another Member State.

13. With effect from 1 May 2010, that regulation was replaced 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,[5] Articles 3 and 11 of which essentially correspond to Articles 4 and 13 of Regulation No 1408/71.

B – *French law*

14. Pursuant to Article L. 136-6 of the code de la sécurité sociale (Social Security Code), in the version applicable to the facts in the main proceedings, natural persons who are resident for tax purposes in France, within the meaning Article 4 B of the code général des impôts (General Tax Code), are subject to a contribution in respect of income from assets that is based on the net amount adopted for the assessment of income tax on, inter alia, 'revenus fonciers' (real estate income).

15. In accordance with Article 1600-0 C of the General Tax Code, which is one of the provisions of that code relating to the 'contribution sociale généralisée perçue au profit de la Caisse nationale des allocations familiales, du fonds de solidarité vieillesse et des régimes obligatoires d'assurance maladie' (General social contribution levied for the benefit of the National Family Allowances Fund, the Old-Age Solidarity Fund and the compulsory sickness insurance schemes, 'the CSG'), in the version applicable to the facts in the main proceedings, natural persons who are resident for tax purposes in France, within the meaning Article 4 B, are, as stated in Article L. 136-6 of the Social Security Code, subject to a contribution in respect of income from assets that is based on the net amount adopted for the assessment of income tax on, inter alia, real estate income.

16. In accordance with Article 1600-0 F bis of the General Tax Code, in the version applicable to the facts in the main proceedings, such persons are also subject, in accordance with Article L. 245-14 of the Social Security Code, to a 'prélèvement social' (social levy) of 2% of that income, to an additional contribution of 0.3% pursuant to Article L. 14-10-4 of the code de l'action sociale et des familles (Social Action and Families Code) and to an additional contribution of 1.1% pursuant to Article L. 262-24 of the Social Action and Families Code.

III – The dispute in the main proceedings, the question referred for a preliminary ruling and the procedure before the Court

17. Mr de Lobkowicz, a French national, was an official of the European Commission from 1979 until his retirement on 1 January 2016. In accordance with Chapter 2 of Title V of the Staff Regulations, and Article 72 thereof in particular, he is compulsorily affiliated to the social security scheme for officials and other servants of the European Union.

18. Pursuant to Article 13 of the Protocol, Mr de Lobkowicz is resident for tax purposes in France. He has been receiving real estate income in France which has been assessed, for the years 2008 to 2011, to the CSG, to the 'contribution pour le remboursement de la dette sociale' (social debt repayment contribution, 'the CRDS'), the social levy of 2% and the contributions additional to that levy at the rates of 0.3% and 1.1%.

5 — OJ 2004 L 166, p. 1.

19. Following the authorities' refusal to grant his application for exemption from those contributions and that levy, Mr de Lobkowicz brought an action before the Tribunal administratif de Rouen (Administrative Court, Rouen, France).

20. By judgment of 13 December 2013, that court held that there was no need to adjudicate on the sums that had been paid by way of the CRDS, which had already been reimbursed by the authorities,[6] and dismissed the remainder of Mr de Lobkowicz's claims.

21. Mr de Lobkowicz appealed against that judgment before the cour administrative d'appel de Douai (Administrative Court of Appeal, Douai).

22. That national court states, first of all, that the contributions and the levy at issue constitute taxes under national law and consequently the fact that Mr de Lobkowicz cannot receive any direct benefit in return for paying them does not alter their validity.

23. Next, it states that, while it may be clear from the judgment of the Court of Justice of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123), that tax levies on income from assets which have a direct and relevant link with certain branches of social security fall within the scope of Regulations Nos 1408/71 and 883/2004, officials of the European Union and the members of their families, who are compulsorily affiliated to the social security scheme of the EU institutions, cannot be regarded as 'workers' within the meaning of those regulations.[7] According to the national court, Article 13 of Regulation No 1408/71 and Article 11 of Regulation No 883/2004 therefore do not apply to them.

24. Lastly, the national court emphasises that, even if an EU official did have the status of 'worker' within the meaning of Article 45 TFEU, that provision does not lay down any general rules governing the allocation of competences between the Member States and the EU institutions regarding the funding of social security benefits or special non-contributory benefits.

25. It was in those circumstances that the national court decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Is there any principle of EU law which precludes officials of the European Commission from being subject to the [CSG], the social levy and the contributions additional to that levy at the rates of 0.3% and 1.1% in respect of income from real estate received in a Member State of the European Union?'

26. Mr de Lobkowicz, the French Government and the Commission have lodged written observations on this question. In accordance with the third paragraph of Article 16 of the Statute of the Court of Justice of the European Union, the French Government has requested the Court to sit in Grand Chamber in this case. Mr de Lobkowicz, the French Government and the Commission presented oral argument at the hearing on 18 October 2016.

6 — It is apparent from the observations submitted by Mr de Lobkowicz that exemption from the CRDS was granted following the amendment of Article L. 136-1 of the Social Security Code and the judgment of the Conseil d'État (Council of State, France) of 4 May 2011 in *Ministre du Budget* v *Cousin* (ECLI:FR:CESSR:2011:330551.20110504), in which it was held that only persons resident for tax purposes in France and covered by a compulsory sickness insurance scheme in France could be liable to the CRDS. It seems, however, that the establishment of the latter criterion is the result of a 'legal accident' and was abandoned by the Law on financing social security for the year 2012, which is not applicable to the events in the main proceedings: see in that regard the report by Matt, J.L., *Impôt sur le revenue: Contribution sociale generalisée. Quelles réformes?*, Conseil des prélèvements obligatoires, Paris, 2015, p. 15, available at https://www.ccomptes.fr/.

7 — The national court refers in this connection to the judgment of 3 October 2000, *Ferlini* (C-411/98, EU:C:2000:530), which concerned the interpretation of Regulation No 1408/71.

IV – Assessment

A – *The admissibility of the request for a preliminary ruling and reformulation of the question referred to the Court*

27. The French Government maintains, as a principal argument, that the request for a preliminary ruling is manifestly inadmissible, since the referring court has asked a question which concerns Article 45 TFEU without specifying the nationality of the applicant in the main proceedings or whether the applicant has made use of his right of free movement.

28. That objection cannot, in my view, succeed.

29. Admittedly, in the context of the cooperation instituted by Article 267 TFEU, it is necessary for the referring court to define the factual and legislative context of the questions it asks or, at the very least, to explain the factual circumstances on which those questions are based. [8]

30. As the Court has repeatedly observed, that requirement serves a dual purpose. On the one hand, it enables the Court to provide an interpretation of EU law and an answer that will be of use to the referring court. On the other hand, it affords the governments of the Member States and other interested parties an opportunity to submit observations in accordance with Article 23 of the Statute of the Court of Justice of the European Union, given that, under Article 23, only the order for reference is notified to the interested parties. [9]

31. In the present case, the order for reference in no way suffers the defects of which the French Government complains. Moreover, the Court cannot decline to answer the question referred on the ground that the situation which gave rise to the main proceedings is confined to a single Member State.

32. I admit that, as the French Government observes, the mere status of official of the European Union does not *ipso jure* confer on a person the status of 'worker' within the meaning of Article 45 TFEU, since that status is dependent on actual exercise of the right to free movement. [10] However, it is clear from the written observations which the French Government has submitted in the alternative that Mr de Lobkowicz undisputedly took up his duties with the Commission in Belgium and thus made use of his right of free movement in order to carry on a professional activity in a Member State other than France. In addition, the fact that Mr de Lobkowicz is resident for tax purposes in France pursuant to Article 13 of the Protocol indicates that, when he entered the service of the Commission in Brussels (Belgium) in 1979, he was domiciled in France. [11] That being so, the fact that the referring court has not informed the Court of Mr de Lobkowicz's nationality is irrelevant.

33. In any event, the French Government's objection is based on the incorrect assumption that the question referred for a preliminary ruling, as that government reads it, solely concerns Article 45 TFEU.

8 — See, to that effect, inter alia, the order of 14 November 2013, *Mlamali* (C-257/13, not published, EU:C:2013:763, paragraph 18 and the case-law cited).

9 — See, to that effect, inter alia, the order of 14 November 2013, *Mlamali* (C-257/13, not published, EU:C:2013:763, paragraphs 18 and 24 and the case-law cited).

10 — See the judgment of 16 December 2004, *My* (C-293/03, EU:C:2004:821, paragraphs 39 to 43). See also my Opinion in *Wojciechowski* (C-408/14, EU:C:2015:393, point 25).

11 — That is why, in the case of EU officials, the place of residence for tax purposes, contrary to what the French Government maintains, provides a basis for determining whether the person in question falls within the scope of Article 45 TFEU. Article 13 of the Protocol is in fact based on the legal fiction that officials and other servants of the institutions maintain throughout their career their domicile for tax purposes — that is to say, the centre of their interests — in the Member State where they were domiciled at the time they entered into service.

34. In my opinion, and as the Commission's written observations suggest, in view of the wording of the question referred for a preliminary ruling, which seeks to establish whether 'any principle' of EU law excludes officials of the European Union from liability to pay social contributions and levies in the Member State in which they are resident for tax purposes, it is perfectly feasible to consider that question from a different perspective, that is to say, from the perspective of interpretation of the Staff Regulations, in conjunction, if appropriate, with the principle of sincere cooperation, as expressed in Article 4(3) TUE and, as I shall go on to explain, to find in the interpretation of Article 14 of the Protocol and the Staff Regulations confirmation of the principle that the legislation of a single Member State only is to apply in matters of social security.

35. As the case-law illustrates, the question referred for a preliminary ruling therefore remains relevant from the perspective of interpretation of EU law whether or not the official or other servant of the European Union in question has made use of his right to free movement. [12]

36. It follows, in my opinion, that, even if the omissions to which the French Government points prove to have been made, the Court cannot declare the question referred for a preliminary ruling inadmissible or decline to answer it on the ground that it lacks jurisdiction.

37. Admittedly, if a national court fails to identify any specific provision of EU law in its request for interpretation, that may on occasion create such difficulties that the Court will find that it must decline to provide a substantive answer to the question referred. [13] However, the Court often deems it appropriate, having regard to the information communicated to it by a national court and mindful of its task, under Article 267 TFEU, of providing an answer to the question referred to it that will be useful in resolving the dispute in the main proceedings, to consider provisions of EU law to which a national court has not referred in its question. [14] Such a situation will arise, in particular, when the question referred to the Court for a preliminary ruling does not mention any specific provision of EU law but makes a general reference to the Treaty or to EU law as a whole. [15] Accordingly, where questions are formulated imprecisely, vaguely or inaccurately, the Court reserves the right to glean from all the information provided by the national court and from the documents concerning the main proceedings the points of EU law that require interpretation, having regard to the subject matter of the dispute. [16]

38. In the present case, given the status of the applicant in the main proceedings and the solution arrived at by the Court in its judgment of 26 February 2015 in *de Ruyter* (C-623/13, EU:C:2015:123), to which the referring court has made ample reference, I consider it appropriate to reformulate the question referred as meaning that it asks whether, by analogy with Regulations Nos 1408/71 and 883/2004, the principle that the legislation of a single Member State only is to apply in matters of social security arises either upon interpretation of Article 45 TFEU or upon interpretation of the

12 — See, concerning the question whether the years of service in an EU institution completed by a Belgian national may be taken into account, fully or partly, in determining his entitlement to pension rights in Belgium, the judgment of 16 December 2004, *My* (C-293/03, EU:C:2004:821), the order of 9 July 2010, *Ricci and Pisaneschi* (C-286/09, not published, EU:C:2010:420), and the judgment of 10 September 2015, *Wojciechowski* (C-408/14, EU:C:2015:591). See also, concerning a failure to take into account periods of work as a member of the contract staff of an EU institution completed by a Belgian national in establishing entitlement to unemployment benefits, the judgment of 4 February 2015, *Melchior* (C-647/13, EU:C:2015:54).

13 — See, to that effect, the Opinion of Advocate General Wahl in *Gullotta and Farmacia di Gullotta Davide & C.* (C-497/12, EU:C:2015:168, point 89). See, in that vein, the judgment of 13 February 2014, *Crono Service and Others* (C-419/12 and C-420/12, EU:C:2014:81).

14 — See, inter alia, the judgments of 21 February 2006, *Ritter-Coulais* (C-152/03, EU:C:2006:123, paragraph 29) and of 27 October 2009, *ČEZ* (C-115/08, EU:C:2009:660, paragraph 81). If the information in the case file communicated to the Court so permits, the Court's power to reformulate questions referred for a preliminary ruling also makes it possible to avert the otherwise probable repetition of the request for a preliminary ruling. It therefore also rests on reasons of economy of procedure. See, to that effect, my Opinion in *Gysen* (C-449/06, EU:C:2007:663, point 43).

15 — See, inter alia, the judgments of 13 December 1984, *Haug-Adrion* (251/83, EU:C:1984:397, paragraphs 9 to 11), and of 26 September 1996, *Arcaro* (C-168/95, EU:C:1996:363, paragraphs 21 to 23).

16 — See, in particular, the judgments of 13 December 1984, *Haug-Adrion* (251/83, EU:C:1984:397, paragraph 9); of 26 September 1996, *Arcaro* (C-168/95, EU:C:1996:363, paragraph 21); and of 11 March 2010, *Attanasio Group* (C-384/08, EU:C:2010:133, paragraph 18 and the case-law cited).

Protocol and the Staff Regulations, if necessary taken together with the principle of sincere cooperation, and thus precludes officials of EU institutions from being subject to the social contributions and the levy at issue in the main proceedings in respect of real estate income which they receive in the Member State in which they are resident for tax purposes.

B – *Substance*

39. The starting point for answering the question referred for a preliminary ruling, as I suggest it should be reformulated, is in my opinion an examination of the judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123). After examining that judgment, I propose to verify whether the solution adopted in it may be transposed to the present case.

1. The judgment of 26 February 2015, de Ruyter (C-623/13, EU:C:2015:123)

40. As I have already mentioned, Mr de Ruyter, a Dutch national, was employed by a Dutch company but was resident for tax purposes in France. From 1997 to 2004, he received income in the form of life annuities in respect of real property which he had sold in the Netherlands. The French tax authorities treated those annuities as income from assets and subject, as such, to the CSG, the CRDS, the social levy of 2% and the contribution additional to that levy at the rate of 0.3%.

41. Mr de Ruyter disputed his liability to pay the contributions and the social levy in question before the French administrative courts. Referring to the judgments of 15 February 2000, *Commission* v *France* (C-34/98, EU:C:2000:84), and *Commission* v *France* (C-169/98, EU:C:2000:85),[17] he maintained that, because they were specifically allocated to the funding of compulsory French social security schemes, they were contrary to Article 13 of Regulation No 1408/71, which gives expression to the principle that the legislation of a single Member State only is to apply in matters of social security.

42. In the opinion of the national court, the Conseil d'État (Council of State, France), which had referred a question to the Court of Justice for a preliminary ruling, there was no question but that the social contributions and the levy in question contributed to the funding of compulsory French social security schemes. However, the Conseil d'État questioned whether, notwithstanding the fact that, by contrast with the situation which gave rise to the judgments of 15 February 2000, *Commission* v *France* (C-34/98, EU:C:2000:84) and *Commission* v *France* (C-169/98, EU:C:2000:85), the contributions and levy were imposed not on employment income and substitute income but on income from the assets of the taxpayer concerned, irrespectively of the pursuit of any professional activity, and the fact that the contributions and levy did not give rise to any benefit or advantage provided by a social security scheme, it could still conclude that they had a direct and relevant link with certain branches of social security and thus fell within the scope of Regulation No 1408/71.

43. The Court answered that question in the affirmative.

44. The Court first of all reiterated that the decisive factor for the purposes of the application of Regulation No 1408/71 was that there must be a direct and sufficiently relevant link between the national provision in question and the legislation governing the branches of social security listed in Article 4 of that regulation, regardless of whether the levy in question could be categorised as a 'tax' under national legislation.[18]

17 — The first of these judgments concerned the CRDS while the second concerned the CSG.

18 — Judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123, paragraphs 23 and 24).

45. The Court also referred to its case-law [19] according to which the question of whether benefits are obtained or not in return is irrelevant for the purposes of the application of Regulation No 1408/71, since the decisive criterion is that of the specific allocation of the contribution to the funding of the social security scheme of a Member State. [20]

46. It then held that the conclusion which it had reached in its judgments of 15 February 2000, *Commission* v *France* (C-34/98, EU:C:2000:84, paragraphs 36 and 37), and *Commission* v *France* (C-169/98, EU:C:2000:85, paragraphs 34 and 35) with regard to employment income and substitute income also applied in the case of levies imposed on income from assets, since it was not in dispute that the proceeds of those levies were allocated directly and specifically to the funding of certain branches of social security in France. [21]

47. The Court emphasised in this connection that the determining factor was not the existence of an employment relationship, but the fact that the person was insured, compulsorily or on an optional basis, for one or more of the contingencies covered by a general or special social security scheme mentioned in Article 1(a) of Regulation No 1408/71. [22]

48. The Court also pointed out that, given the completeness of the system of conflict rules laid down in Regulation No 1408/71, and in particular the principle that the legislation of a single Member State only is to apply in matters of social security expressed in Article 13 of that regulation, the purpose of which was to avert the complications which might ensue from the simultaneous application of a number of national legislative systems and to eliminate the unequal treatment of persons moving within the European Union, the application of Regulation No 1408/71 could not be limited to the income that those persons derived from their employment relationships, as otherwise disparities would be created in the application of Article 13 of that regulation depending on the source of their income. [23] 'To require those who, among the residents of a Member State, are insured under the social security scheme of another Member State to finance, in addition, even if only partially, the social security scheme of the Member State of residence would give rise to unequal treatment under Article 13 of Regulation No 1408/71, since all other residents of the latter Member State are required to contribute only to its social security scheme.' [24]

49. It followed, according to the Court, that Mr de Ruyter, who fell within neither of the express exceptions to the application of Article 13 of Regulation No 1408/71, could not be made subject to the contributions and the levy in question in respect of either income from an employment relationship or income from his assets, and that that finding could not be called into question by the fact that the latter might not yet have been subject to a levy in the form of social security contributions in the Member State of employment. [25]

50. The Court's reasoning was thus based essentially on strict observance of the prohibition on the overlapping of social security legislation and the conflict rule as laid down in Article 13 of Regulation No 1408/71, or in other words the exclusive application of the social security legislation of the Member State of employment. As Advocate General Sharpston stated in point 57 of her Opinion in *de Ruyter* (C-623/13, EU:C:2014:2307), to which the Court referred in paragraph 41 of its judgment, to make

19 — Judgments of 15 February 2000, *Commission* v *France* (C-34/98, EU:C:2000:84, paragraphs 39 and 40), and *Commission* v *France* (C-169/98, EU:C:2000:85, paragraphs 37 and 38).

20 — Judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123, paragraph 26).

21 — Judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123, paragraph 28).

22 — Judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123, paragraph 31).

23 — See, to that effect, judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123, paragraphs 35, 37 and 38).

24 — Judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123, paragraph 39 and the case-law cited).

25 — Judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123, paragraphs 40 and 41).

Mr de Ruyter subject to the contributions and the levy at issue in that case 'would be to disregard the prohibition on overlapping legislation in Article 13(1), and the conflict rule laid down in Article 13(2)(a), of that regulation. Whether the life annuities received by Mr de Ruyter in the Netherlands were in fact subject to social contributions there is thus irrelevant'. [26]

51. May similar reasoning be followed in the present case?

52. The French Government maintains that it cannot. Since officials of the European Union do not fall within the scope of Regulation No 1408/71 or Regulation No 883/2004, they cannot, in its view, invoke the principle that the legislation of a single Member State only is to apply in matters of social security, since there is no equivalent principle either in primary EU law, in particular Article 45 TFEU, or in secondary EU law.

53. While the French Government's argument is not entirely wrong, it does, in my view, fail to take account of an essential legal point, that is to say, the existence of the common social security scheme for EU officials provided for in the Staff Regulations. Once the Staff Regulations and the Member States' obligation to pay heed to them are taken into account, Mr de Lobkowicz's situation will be seen to be very similar to that of Mr de Ruyter.

2. Application of the solution adopted in the judgment of 26 February 2015, de Ruyter (C-623/13, EU:C:2015:123), to the case in the main proceedings

54. It is not disputed that the CSG and the other contributions and the levy at issue in the case in the main proceedings are allocated directly and specifically to the funding of various branches of social security in France and therefore fall within the scope of Regulations Nos 1408/71 and 883/2004. [27]

55. Nor is it disputed that the real estate income at issue in the main proceedings is regarded under national law as income from assets, like the life annuities that were at issue in the case which gave rise to the judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123).

56. Nor indeed is it disputed that, as I have already mentioned, EU officials like Mr de Lobkowicz do not fall within the scope of Regulation No 1408/71 or Regulation No 883/2004. [28]

57. That last fact, which distinguishes the present case from that which gave rise to the judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123), has led the interested parties to focus their observations on the question of whether the principle that the legislation of a single Member State only is to apply in matters of social security arises directly from Article 45 TFEU. The interested parties disagree on this point. The Commission and Mr de Lobkowicz claim that this is the case and that, consequently, the solution adopted by the Court in its judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123), may be transposed to the present case on the basis of the Court's interpretation of Article 45 TFEU. As I have already mentioned, the French Government argues the opposite and claims that only workers falling within the scope of Regulation No 1408/71 or Regulation No 883/2004 may derive any benefit from the judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123), since the principle that the legislation of a single Member State only is to apply in matters of social security is enshrined only in those regulations.

26 — In point 56 of her Opinion, Advocate General Sharpston described the rule in Article 13(1) of Regulation No 1408/71 which prohibits the overlapping of systems as an 'absolute rule' subject only to the exceptions contained in Articles 14c and 14f of that regulation.

27 — I would point out that, while the judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123), concerned CSG, the social levy of 2% and an additional contribution at the rate of 0.3%, the present case concerns, in addition to these, an additional contribution at the rate of 1.1%, the proceeds from which, as the referring court notes, are allocated to the *fonds national des solidarités actives* (national active solidarity fund) and which, according to the referring court, must also be regarded as falling with the scope of Regulations Nos 1408/71 and 883/2004.

28 — See, inter alia, the judgments of 3 October 2000, *Ferlini* (C-411/98, EU:C:2000:530, paragraph 41), and of 16 December 2004, *My* (C-293/03, EU:C:2004:821, paragraph 35).

58. Despite the Commission's efforts, repeated at the hearing, to find suggestions in the case-law which support its view that the principle does indeed arise directly from Article 45 TFEU, it seems to me that this question has already been answered in the negative by the Court in its judgment of 16 January 1992, *Commission* v *France* (C-57/90, EU:C:1992:10). In that case, which concerned a situation in which recipients of an early retirement or supplementary pension did not fall within the scope of Regulation No 1408/71, the Commission and the French Republic took opposing views on whether the 'single system of legislation' principle was a principle that had existed prior to Regulation No 1408/71 and arose from the Treaty provisions on the freedom of movement of workers.[29] More specifically, while admitting that the failure to fulfil obligations complained of concerned recipients of schemes which, at the time, did not fall within the material scope of Regulation No 1408/71, the Commission had argued that, in judgments prior to the entry into force of Regulation No 1408/71, the Court had interpreted Articles 48 and 51 of the EEC Treaty (now Articles 45 and 48 TFEU) in a manner consistent with the existence of a principle that a single system of legislation must apply.[30] However, disagreeing also with the Opinion of Advocate General Lenz in this case (C-57/90, EU:C:1991:345), the Court rejected the Commission's line of argument. It held that the recipients of the schemes in question were not in one of the situations governed by Article 13 of Regulation No 1408/71 and that 'the principle that a single system of legislation should apply [could not, therefore,] be invoked for their benefit'.[31] It concluded from that that the French Republic had not 'failed to fulfil its obligations *under the EEC Treaty* and, in particular, [had] not acted in breach of [Article] 13(1)' of Regulation No 1408/71.[32]

59. The subsequent case-law of the Court has not yet called that judgment into question. The fact, mentioned by the Commission, that the Court frequently states that the principle that the legislation of a single Member State is to apply in matters of social security 'is expressed, in particular, in Article 13(1) of Regulation No 1408/71'[33] is, to my mind, no more than a reminder that other provisions of the same regulation also give expression to that principle.[34]

60. In addition, the Court has recently had occasion, in its judgment of 26 October 2016, *Hoogstad* (C-269/15, EU:C:2016:802, paragraph 37), to reiterate that the principle that the legislation of a single Member State is to apply in matters of social security applies only to the situations referred to in Article 13(2) and Articles 14 to 17 of Regulation No 1408/71, inasmuch as those provisions determine the conflict rules which are to apply in each situation.

61. The judgments which the Commission cited at the hearing equally fail to support its position that the Court has unequivocally confirmed that the principle that the legislation of a single Member State is to apply in matters of social security arises directly from the Treaty provisions on the freedom of movement of workers.

62. That is certainly true of the judgment of 9 June 1964, *Nonnenmacher* (92/63, EU:C:1964:40, p. 228). Indeed, in that judgment, handed down before the judgment of 16 January 1992, *Commission* v *France* (C-57/90, EU:C:1992:10), the Court interpreted the relationship between Article 12 of Regulation No 3 of the Council of the EEC of 25 September 1958 concerning social security for migrant workers[35] and Articles 48 and 51 of the EEC Treaty. It stated that a prohibition of the simultaneous application of two national systems of legislation concerning workers could not be

29 — Judgment of 16 January 1992, *Commission* v *France* (C-57/90, EU:C:1992:10, paragraphs 8 to 10).

30 — Judgment of 16 January 1992, *Commission* v *France* (C-57/90, EU:C:1992:10, paragraphs 8 and 9).

31 — Judgment of 16 January 1992, *Commission* v *France* (C-57/90, EU:C:1992:10, paragraph 14).

32 — Judgment of 16 January 1992, *Commission* v *France* (C-57/90, EU:C:1992:10, paragraph 21) (my italics). See also, to the same effect, the judgment of 6 February 1992, *Commission* v *Belgium* (C-253/90, EU:C:1992:58, paragraph 18).

33 — See, inter alia, the judgment of 12 June 2012, *Hudzinski and Wawrzyniak* (C-611/10 and C-612/10, EU:C:2012:339, paragraph 41 and the case-law cited).

34 — See, in particular, concerning Article 14a(2) of Regulation No 1408/71, the judgments of 9 March 2006, *Piatkowski* (C-493/04, EU:C:2006:167, paragraph 21), and of 16 May 2013, *Wencel* (C-589/10, EU:C:2013:303, paragraph 47).

35 — JO 1958, p. 561.

established in the absence of a specific provision for that purpose and that Article 12 of Regulation No 3 (not Articles 48 and 51 of the EEC Treaty) did not prohibit the application of the legislation of a Member State other than that in which the person concerned worked, except to the extent that it required that person to contribute to the funding of a social security institution which was unable to provide him with additional advantages in respect of the same risk and the same period.

63. It is also true of the judgment of 15 February 2000, *Commission* v *France* (C-169/98, EU:C:2000:85). Admittedly, in that judgment the Court did hold that the French Republic had infringed Articles 48 and 52 of the EC Treaty (now Articles 45 and 49 TFEU). However, that finding followed on from, and was related to, its finding of infringement of Article 13 of Regulation No 1408/71. Moreover, the Court did not state that the principle that the legislation of a single Member State is to apply in matters of social security arose from the abovementioned provisions of the EC Treaty. It merely held that imposing the CSG on the employment income and replacement income of employees and self-employed persons who resided in France but were not subject to French social security legislation, which caused them to contribute to the funding of the social security scheme of that Member State without being affiliated to it, constituted both an infringement of Article 13 of Regulation No 1408/71 and, as a result of the existence of Article 13, unequal treatment that hindered the free movement of workers.[36] It is therefore apparent that the failure to fulfil obligations under Articles 48 and 52 of the EC Treaty which the Court found in that case was not entirely independent of the infringement of Article 13 of Regulation No 1408/71. In any event, as I shall explain in point 65 below, a prohibition precluding Member States from requiring workers to contribute to the funding of social security schemes to which they are not affiliated is not an automatic consequence of finding that the situation under consideration falls within the scope of the principle that the legislation of a single Member State is to apply in matters of social security.

64. Thus, while the principle that the legislation of a single Member State only is to apply in matters of social security certainly helps to promote the free movement of workers within the European Union, ensuring that they are subject to only one system of social security legislation,[37] that principle does not, at this stage in the development of EU law, emanate directly from Article 45 TFEU. To borrow the Commission's expression, it is not 'inherent' in Article 45 TFEU.

65. That said, it is quite possible that the debate between the interested parties in this case about the origin of the principle that the legislation of a single Member State only is to apply in matters of social security ultimately comes down to a misunderstanding about the meaning which the Commission ascribes to those words. Indeed, in light of the Commission's submissions at the hearing in particular, it seems that that institution understands the concept expressed by these words as being coterminous with the prohibition which precludes Member States from requiring workers to pay social security contributions on which there is no return, that is to say, for which they can receive no social security benefits, and from requiring workers to contribute to the funding of national social security schemes to which they are not affiliated and from which they cannot hope to receive any benefit. It is true that, as the Commission argues, the Court does holds the Member States to be bound by that prohibition, which it sometimes infers directly from the Treaty provisions on the free movement of

36 — See the judgment of 15 February 2000, *Commission* v *France* (C-169/98, EU:C:2000:85, paragraphs 42 to 45).

37 — See, to that effect, the judgment of 26 May 2005, *Allard* (C-249/04, EU:C:2005:329, paragraph 32).

persons.[38] Nevertheless, the prohibition is not coterminous with the principle that the legislation of a single Member State only is to apply in matters of social security. Indeed, the Court has held the prohibition to apply in situations where migrant workers were subject to several systems of national social security legislation simultaneously.[39]

66. A prohibition which precludes Member States from levying double contributions without providing any additional benefit and from requiring migrant workers to contribute to the funding of social security schemes to which they are not affiliated and from which they cannot therefore derive any benefit seems to me to be the common denominator of the case-law just discussed, irrespectively of whether the situation under consideration is governed by Regulation No 1408/71 or Regulation No 883/2004 or falls outside the scope of application of those regulations.

67. In other words, this prohibition arises both from the principle that the legislation of a single Member State only is to apply in matters of social security, where it applies, and from the requirement to eliminate inequality of treatment as between migrant workers and non-migrant workers where the principle does not directly apply.[40]

68. Ultimately, it is this prohibition that is at issue in the present case. Indeed, it is common ground that the contributions and the social levy claimed from Mr de Lobkowicz are allocated directly and specifically to the funding of various branches of the French social security system, to which Mr de Lobkowicz is not affiliated, inasmuch as he is affiliated, compulsorily and exclusively, to the common sickness insurance scheme ('the CSIS') established by the Staff Regulations.

69. That said, the fact that Mr de Lobkowicz's situation is governed by the Staff Regulations must not be forgotten or played down. In particular, it should not, in my opinion, cause the Court to examine the question referred for a preliminary ruling principally from the perspective of Article 45 TFEU, rather than from the perspective of the Staff Regulations.

70. It must be borne in mind in this connection that it is clear from Article 14 of the Protocol and from the Staff Regulations that the European Union has sole competence to establish the social security scheme for its officials and the rules governing how that scheme operates.

71. The Staff Regulations go far beyond the system for the coordination of national social security legislation provided for by Regulations Nos 1408/71 and 883/2004, inasmuch as they provide for a veritable *common* sickness insurance scheme and a pension scheme for the benefit of European Union officials. Those schemes, which officials must join when they take up their duties, concern key

38 — See, in particular, the judgments of 15 February 1996, *Kemmler* (C-53/95, EU:C:1996:58, paragraphs 13 and 14); of 15 February 2000, *Commission* v *France* (C-169/98, EU:C:2000:85, paragraphs 42 and 45); of 19 March 2002, *Hervein and Others* (C-393/99 and C-394/99, EU:C:2002:182, paragraph 49); of 21 January 2016, in *Commission* v *Cyprus* (C-515/14, EU:C:2016:30, paragraph 40); and of 6 October 2016, *Adrien and Others* (C-466/15, EU:C:2016:749, paragraph 30). Most of these judgments were cited by the Commission in support of its argument that Article 45 TFEU enshrines the principle that the legislation of a single Member State is to apply in matters of social security.

39 — See the judgments of 19 March 2002, *Hervein and Others* (C-393/99 and C-394/99, EU:C:2002:182, paragraphs 49, 61 and 64); of 9 March 2006, *Piatkowski* (C-493/04, EU:C:2006:167, paragraphs 34 to 36); and of 6 October 2016, *Adrien and Others* (C-466/15, EU:C:2016:749, paragraphs 30). See also, to that effect, the Opinion of Advocate General Sharpston in *de Ruyter* (C-623/13, EU:C:2014:2307, point 58).

40 — It is interesting to note in this connection that, in its judgment of 6 October 2016, *Adrien and Others* (C-466/15, EU:C:2016:749, paragraph 30), the Court found the French legislation at issue in that case to be a hindrance to free movement, and thus contrary to Article 45 TFEU, simply because the persons in question, temporary staff members seconded to EU institutions, were required to pay 'contributions which [were] non-recoverable' to a national pension scheme to which they remained affiliated, having exercised an option which was open to them as national civil servants on secondment.

branches of social security. If the cover were being provided to other classes of migrant worker pursuant to national legislation, the schemes would most certainly fall within the substantive scope of Regulations Nos 1408/71 and 883/2004.[41] Moreover, officials are required to pay social security contributions to these schemes.[42]

72. When exercising their power to organise their social security systems, the Member States are without question required to observe EU law,[43] and in particular the Protocol, which has the same legal value as the Treaties,[44] and the Staff Regulations, which, I would repeat, were laid down by means of a regulation of general application, are binding in their entirety and are directly applicable in all the Member States, in accordance with the second paragraph of Article 288 TFEU.[45]

73. For that reason, if a Member State were to require EU officials to pay social security contributions based on their salary, it would manifestly be encroaching on the competence of the EU institutions under Article 14 of the Protocol and the Staff Regulations. From the EU official's point of view, any such liability could deter him from accepting employment within an EU institution, in that he would have to continue to contribute to the social security scheme of his Member State of origin without receiving any benefits in return.[46] From the point of view of the EU institutions, such a situation would make it harder for them to operate properly and would thus constitute a breach of the Member States' duty of sincere cooperation and assistance, which includes the obligation to facilitate the achievement of the institutions' tasks.[47]

74. That would remain the case if a Member State's legislation were to impose on the salaries and emoluments of EU officials contributions and levies that are allocated directly and specifically to the funding of the social security scheme of that Member State, irrespectively of whether those contributions and levies are classified as 'taxes' under national law[48] or whether they confer entitlement to social benefits or advantages under the social security legislation of that Member State.[49] Indeed, given the Protocol and the Staff Regulations, EU officials cannot be made subject, in respect of their salaries and wages, to the social security legislation of a Member State, including that of the Member State in which they are resident for tax purposes pursuant to Article 13 of the Protocol.

75. The exclusive competence which the EU institutions enjoy in laying down the rules and procedures applicable to their officials' sickness insurance schemes and pension schemes is intended not only to facilitate recruitment but also to ensure that officials enjoy social cover that is comprehensive and uniform and to fix the level of their contributions to those schemes, irrespectively of the applicable

41 — In accordance with the Conditions of Employment of Other Servants, the social security provisions of the Staff Regulations also apply, by analogy, to temporary staff members.

42 — See, with regard to the CSIS, the third subparagraph of Article 72(1) of the Staff Regulations and, with regard to the pension scheme, Article 83(2) thereof.

43 — See, inter alia, the judgments of 4 December 2003, *Kristiansen* (C-92/02, EU:C:2003:652, paragraph 31); of 4 February 2015, *Melchior* (C-647/13, EU:C:2015:54, paragraph 21); and of 10 September 2015, *Wojciechowski* (C-408/14, EU:C:2015:591, paragraph 35).

44 — See, inter alia, Opinion 2/13 of 18 December 2014 (EU:C:2014:2454, paragraph 161).

45 — See, to that effect, inter alia, judgments of 4 July 2013, *Gardella* (C-233/12, EU:C:2013:449, paragraph 30), and of 10 September 2015, *Wojciechowski* (C-408/14, EU:C:2015:591, paragraph 36). See also, concerning the Conditions of Employment of Other Servants, judgment of 4 December 2003, *Kristiansen* (C-92/02, EU:C:2003:652, paragraph 32).

46 — See, to that effect, in particular, judgment of 21 January 2016, *Commission* v *Cyprus* (C-515/14, EU:C:2016:30, paragraph 45).

47 — See, to that effect, in particular, judgment of 21 January 2016, *Commission* v *Cyprus* (C-515/14, EU:C:2016:30, paragraph 52 and the case-law cited).

48 — Indeed, in the particular case of EU officials and temporary staff members, classifying as 'taxes' under national law such contributions and levies imposed on the income from such persons' employment within an EU institution would, in any case, contravene the prohibition expressed in the second paragraph of Article 12 of the Protocol, which provides that they are exempt from national taxes on salaries, wages and emoluments paid by the Union.

49 — See, by analogy, judgments of 15 February 2000, *Commission* v *France* (C-169/98, EU:C:2000:85, paragraphs 32, 37 and 38), and of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123, paragraphs 24 and 26).

social security laws in their Member State of origin. The purpose of that conferral of competence on the EU institutions is therefore also to ensure that EU officials of different nationalities are treated equally and, in particular, cannot be constrained to contribute to the funding of several different social security schemes or to pay into such schemes.

76. I therefore consider that Article 14 of the Protocol and the social security provisions of the Staff Regulations fulfil, with respect to EU officials, a function that is at least similar to that which Article 13 of Regulation No 1408/71 and Article 11 of Regulation No 883/2004 fulfil with respect to other migrant workers, and which consists, in particular, in prohibiting the overlapping of social security schemes and precluding any obligation to contribute to the funding of, or to pay into, such schemes without being able to derive any benefit from them.

77. That analysis is borne out by the fact that, by contrast with officials (and temporary staff members) of the European Union, members of the Union's contractual staff, the duration of whose contracts could not in principle, at the time of the relevant facts in the case in the main proceedings, exceed three years, fall within the scope of Article 16(3) of Regulation No 1408/71 or Article 15 of Regulation No 883/2004, as amended by Regulation (EC) No 988/2009 of the Parliament and of the Council of 16 September 2009.[50] [51] Although contractual staff have a right of option, their exercise of that option, which must take effect on the date of entry into employment, can only lead to the application of the social security legislation of a single Member State. Thus, in accordance with the abovementioned regulations, a member of the Union's contractual staff who is resident for tax purposes in France and who opts for the application of the social security legislation of the Member State in which he is employed, which might be the Kingdom of Belgium for example, should, like other workers falling within the scope of Regulation No 1408/71 or Regulation No 883/2004, be relieved of any obligation to contribute, even in part, to the funding of the social security scheme of the Member State in which he is resident for tax purposes, to which he will not be affiliated. That is in accordance with the solution adopted in the judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123, paragraphs 38 to 40), and it also applies to any income from assets which the member of the contractual staff may receive.

78. If one then also considers the relationship between the Staff Regulations, which I would reiterate date from 1968, and Regulations Nos 1408/71 and 883/2004, it seems highly unlikely that the EU legislature should have intended to exclude EU officials and temporary staff members, but not other classes of migrant workers, from application of the principle that the legislation of a single Member State only is to apply in matters of social security, bearing in mind that the social security legislation which applies to officials and temporary staff members is contained in the relevant provisions of the Staff Regulations. Indeed, the converse is true: the abovementioned regulations do not apply to officials and temporary staff members because they are already covered by the CSIS, which the Staff Regulations instituted.

79. That being so, I consider that the reasoning underlying the solution which the Court adopted in its judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123, paragraphs 38 to 40), applies equally to the situation of EU officials such as Mr de Lobkowicz. Indeed, if that were not the case, such officials, resident in France pursuant to Article 13 of the Protocol, would not only be constrained to pay into the CSIS, in accordance with the Staff Regulations, but also to fund, if only in part, the various branches of the French social security system, while other French residents who have not exercised their right of free movement would contribute only to the French system.

50 — OJ 2009 L 284, p. 43.

51 — Those two provisions are worded as follows: 'Contract staff of the European [Union] may opt to be subject to the legislation of the Member State in which they are employed, to the legislation of the Member State to which they were last subject or to the legislation of the Member State whose nationals they are, in respect of provisions other than those relating to family allowances, provided under the scheme applicable to such staff. This right of option, which may be exercised once only, shall take effect from the date of entry into employment.' Prior to the creation, within the scheme applicable to other servants, of the class of contractual staff, Article 16(3) of Regulation No 1408/71 referred to auxiliary staff.

80. That reasoning is not, in my view, called into question by the objections raised by the French Government that the contributions and the levy at issue do not in any event give rise to any direct social security benefits in return, since they are classified as 'taxes' under national law, and that the income from assets in question is not subject to any other similar contribution.

81. Indeed, as both Mr de Lobkowicz and the Commission have pointed out, those same objections have already been examined by the Court and dismissed in its judgments of 15 February 2000, *Commission* v *France* (C-169/98, EU:C:2000:85, paragraphs 31 to 38), and of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123, paragraph 41).

82. As regards, more specifically, the second of the French Government's objections, I would add that, while it is not disputed that the French Republic is entitled to exercise its fiscal sovereignty in relation to Mr de Lobkowicz's real estate revenue, to which the advantage conferred by Article 13 of the Protocol does not apply, that sovereignty must nevertheless be exercised in compliance with EU law. Since, irrespectively of their classification under national law, the contributions and the levy at issue in the present case are allocated directly and specifically to the funding of French social security, they must be regarded as falling within the ambit of the exclusive competence of the EU institutions to establish the common sickness insurance scheme for their officials. That, as I have already stated, precludes Member States from requiring EU officials to fund, even in part, their own social security systems without having any hope of deriving any benefit from them, by contrast with the position of other residents affiliated to the Member State's social security schemes.

V – Conclusion

83. In light of all the foregoing considerations, I propose that the Court should answer the question referred by the cour administrative d'appel de Douai (Administrative Court of Appeal, Douai, France) as follows:

The principle that the legislation of a single Member State only is to apply in matters of social security, which arises from Article 14 of the Protocol on the Privileges and Immunities of the European Union, annexed to the EU, FEU and EAEC Treaties, and from the provisions 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, as amended by Council Regulation (EU) No 1240/2010 of 20 December 2010, is to be understood as precluding officials of the EU institutions, who are entirely subject to the common sickness insurance scheme laid down by the said regulation, from being required, in the Member State in which they are resident for tax purposes, to pay contributions and levies that are directly and specifically allocated to the funding of the social security system of that Member State and are assessed on real estate income received in that Member State, such that the Member State in question cannot require officials to fund, even in part, its own social security system without having any hope of deriving any benefit from it, by contrast with the position of other residents affiliated to that Member State's social security schemes.