

account of the fact that the recipient resides in a Member State other than that in which the institution responsible for payment is established — European Union citizen who has been resident in two Member States contemporaneously, without opting for a single domicile, and who receives a survivor's pension in one State and an old-age pension in the other State — National legislation allowing, in such a case, review of the right to the pension and repayment of the pension paid during the last three years

Operative part of the judgment

Article 10 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended most recently by Regulation (EC) No 592/2008 of the European Parliament and of the Council of 17 June 2008, must be interpreted as meaning that, for the purposes of the application of the regulation, a person cannot have simultaneously two habitual residences in two different Member States.

Under the provisions of Regulation No 1408/71, in particular Articles 12(2) and 46a, the competent institution of a Member State cannot, in circumstances such as those in the main proceedings, legitimately withdraw, retroactively, the entitlement to a retirement pension of the person concerned and require that person to repay any pension to which it is alleged he was not entitled on the ground that he receives a survivor's pension in another Member State in whose territory he has also been resident. However, the amount of the retirement pension paid in the first Member State may be reduced, up to the limit of the amount of the benefits received in the other Member State, by virtue of the application of any national rule precluding the cumulation of benefits.

Article 45 TFEU must be interpreted as not precluding, in circumstances such as those in the main proceedings, a decision requiring the amount of the retirement pension paid in the first Member State to be reduced, up to the limit of the benefits received in the other Member State, by virtue of the application of any rule precluding the cumulation of benefits, provided that decision does not lead, in respect of the recipient of those benefits, to an unfavourable situation in comparison with that of a person whose situation has no cross-border element and, where such a disadvantage is established, provided that it is justified by objective considerations and is proportionate to the legitimate objective pursued by national law, which it falls to the national court to verify.

⁽¹⁾ OJ C 89, 19.3.2011.

Judgment of the Court (First Chamber) of 8 May 2013 (requests for a preliminary ruling from the Cour constitutionnelle — Belgium) — Eric Libert, Christian Van Eycken, Max Bleeckx, Syndicat national des propriétaires et copropriétaires (ASBL), Olivier de Clippele v Gouvernement flamand (C-197/11), All Projects & Developments NV and Others v Vlaamse Regering (C-203/11)

(Joined Cases C-197/11 and C-203/11) ⁽¹⁾

(Fundamental freedoms — Restriction — Justification — State aid — Concept of ‘public works contract’ — Land and buildings located in certain communes — National legislation making the transfer of land and buildings subject to the condition that there exists a ‘sufficient connection’ between the prospective buyer or tenant and the target commune — Social obligation on subdividers and developers — Tax incentives and subsidy mechanisms)

(2013/C 225/06)

Languages of the case: French and Dutch

Referring court

Cour constitutionnelle

Parties to the main proceedings

(Case C-197/11)

Applicants: Eric Libert, Christian Van Eycken, Max Bleeckx, Syndicat national des propriétaires et copropriétaires (ASBL), Olivier de Clippele

Defendant: Gouvernement flamand

Intervening parties: Collège de la Commission communautaire française, Gouvernement de la Communauté française, Conseil des ministres

(Case C-203/11)

Applicants: All Projects & Developments NV and Others

Defendant: Vlaamse Regering

Intervening parties: College van de Franse Gemeenschapscommissie, Franse Gemeenschapsregering, Ministerraad, Immo Vilvo NV, PSR Brownfield Developers NV

Re:

(Case C-197/11)

Request for a preliminary ruling — Cour constitutionnelle — Interpretation of Articles 21, 45, 49, 56 and 63 TFEU and

Articles 22 and 24 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77) — Compatibility of those provisions with regional legislation under which the sale or lease of land and buildings thereon located in certain communes is conditional upon the prospective purchaser or lessee having a sufficient connection with the commune concerned — Infringement of the right to freedom of movement and residence in the territory of Member States — General interest objective — Principle of proportionality

(Case C-203/11)

Request for a preliminary ruling — Grondwettelijk Hof — Interpretation of Articles 21, 45, 49, 56, 63, 107 and 108 TFEU and Article 86(2) EC — Interpretation of Article 1(2)(b) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114), of Articles 22 and 24 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77) and of Articles 2(2)(a) and (j), 4(6), and 9, 14 and 15 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36) — State aid — Regional legislation on land and real estate policy — Social housing — Public works contracts — Freedom of establishment — Freedom to provide services — Restrictions

Operative part of the judgment

- Articles 21 TFEU, 45 TFEU, 49 TFEU, 56 TFEU and 63 TFEU and Articles 22 and 24 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC preclude legislation, such as Book 5 of the Decree of the Flemish Region of 27 March 2009 on land and real estate policy, which makes the transfer of immovable property in the target communes designated by the Vlaamse Regering subject to verification, by a provincial assessment committee, that there exists a 'sufficient connection' between the prospective buyer or tenant and those communes.
- Article 63 TFEU must be interpreted as not precluding legislation such as Book 4 of the Decree of the Flemish Region, according to which a 'social obligation' is imposed on some economic operators

when a building or land subdivision authorisation is granted, in so far as the referring court finds that that legislation is necessary and appropriate to attain the objective of guaranteeing sufficient housing for the low-income or otherwise disadvantaged sections of the local population.

- The tax incentives and subsidy mechanisms provided for in the Flemish Decree are liable to be classified as State aid within the meaning of Article 107(1) TFEU. It is for the referring court to determine whether the conditions relating to the existence of State aid are met and, if so, to ascertain whether, as regards the measures established in Book 4 of the Flemish Decree whereby compensation is provided for the social obligation to which subdividers and developers are subject, Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) [EC] to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest is nevertheless applicable to such measures.
- The development of social housing units which are subsequently to be sold at capped prices to a public social housing institution, or with substitution of that institution for the service provider which developed those units, is covered by the concept of 'public works contract' contained in Article 1(2)(b) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, as amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009, where the criteria set out in that provision have been met, a matter which falls to be determined by the referring court.

⁽¹⁾ OJ C 211, 16.7.2011.
OJ C 219, 23.7.2011.

Judgment of the Court (First Chamber) of 16 May 2013 (request for a preliminary ruling from the Landgericht Düsseldorf — Germany) — Melzer v MF Global UK Ltd

(Case C-228/11) ⁽¹⁾

(Judicial cooperation in civil matters — Special jurisdiction in matters of tort, delict and quasi-delict — Cross-border participation by several persons in the same unlawful act — Possibility of establishing territorial jurisdiction according to the place where the act was committed by one of the perpetrators of the damage other than the defendant ('wechselseitige Handlungsortzurechnung'))

(2013/C 225/07)

Language of the case: German

Referring court

Landgericht Düsseldorf