



Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

23 November 2023*

(Reference for a preliminary ruling – Regulation (EC) No 1085/2006 – Assistance granted under the instrument for pre-accession assistance (IPA) – Regulation (EC) No 718/2007 – Article 7(1) and (3) – Conclusion of a framework agreement between the European Commission and the beneficiary country concerned – Rules for cooperation concerning the EU financial assistance granted to that beneficiary country – Taxes and fiscal charges – IPA framework agreement Albania-EC – Contract financed by the European Union – Expert having the status neither of an official nor of a member of staff of the European Union – Article 26(2)(c) – Tax exemption in Albania – Tax residence in Croatia – Income tax in Croatia)

In Case C-682/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Upravni sud u Zagrebu (Administrative Court, Zagreb, Croatia), made by decision of 17 October 2022, received at the Court on 2 November 2022, in the proceedings

LM

v

Ministarstvo financija Republike Hrvatske, Samostalni sektor za drugostupanjski upravni postupak,

THE COURT (Tenth Chamber),

composed of Z. Csehi, President of the Chamber, E. Regan (Rapporteur), President of the Fifth Chamber, and D. Gratsias, Judge,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Croatian Government, by G. Vidović Mesarek, acting as Agent,

* Language of the case: Croatian.

– the European Commission, by O. Glinicka, M. Mataija, W. Roels and D. Schaffrin, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 26(2)(c) of the Framework Agreement of 18 October 2007 between the Government of the Republic of Albania and the Commission of the European Communities on the rules for co-operation concerning EC-financial assistance to the Republic of Albania in the framework of the implementation of the assistance under the instrument for pre-accession assistance (IPA) ('the framework agreement').
- 2 The request has been made in proceedings between LM, a Croatian national, and the Ministarstvo financija Republike, samostalni sektor za drugostupanjski upravni postupak (Ministry of Finance, Independent Sector for Second-Instance Administrative Procedure, Croatia) ('the Ministry of Finance') concerning the taxation, by way of income tax in Croatia, of sums that she received in her capacity as an expert in connection with a project financed by the European Union in Albania.

Legal context

European Union law

Regulation (EC) No 1085/2006

- 3 Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA) (OJ 2006 L 210, p. 82), which applied until 31 December 2013, provided, in Article 1 thereof, entitled 'Beneficiaries and overall objective':

'The Community shall assist the countries listed in Annexes I and II in their progressive alignment with the standards and policies of the European Union, including where appropriate the *acquis communautaire*, with a view to membership.'

- 4 Article 17 of that regulation, entitled 'Implementation of assistance', provided, in paragraph 1 thereof:

'The [European] Commission and the beneficiary countries shall conclude framework agreements on the implementation of the assistance.'

- 5 Annex II to that regulation referred, in its first indent, to 'Albania'.

Regulation (EC) No 718/2007

- 6 Article 7 of Commission Regulation (EC) No 718/2007 of 12 June 2007 implementing Council Regulation (EC) No 1085/2006 establishing an instrument for pre-accession assistance (IPA) (OJ 2007 L 170, p. 1), entitled ‘Framework agreements and sectoral agreements’, provided:

‘1. The Commission and the beneficiary country shall conclude a framework agreement, in order to set out and agree on the rules for cooperation concerning EC financial assistance to the beneficiary country. Where necessary, the framework agreement may be complemented by a sectoral agreement, or sectoral agreements, covering component specific provisions.

...

3. The framework agreement shall lay down, in particular, the provisions concerning:

...

(k) the rules on taxes, customs duties and other fiscal charges;

...’

The framework agreement

- 7 Article 26 of the framework agreement, entitled ‘Rules on taxes, customs duties and other fiscal charges’, provides, in paragraph 2 thereof:

‘The following detailed provisions shall apply:

...

- (c) Profit and/or income arising from EC contracts shall be taxable in Albania in accordance with the national/local tax system. However, natural and legal persons, including expatriate staff, from the Member States of the European Union or other countries eligible under [the instrument for pre-accession assistance (IPA)], executing Community financed contracts shall be exempted from those taxes in Albania.

...’

Croatian law

- 8 Article 3(1) of the Zakon o porezu na dohodak (Law on Income Tax) of 3 December 2004 (*Narodne novine*, br. 177/04, 73/08, 80/10, 114/11, 22/12, 144/12, 43/13, 120/13, 125/13, 148/13, 83/14, 143/14, 136/2015), provides:

‘A resident is a natural person who is domiciled or habitually resident in the Republic of Croatia.’

- 9 Under Article 6(1) of that law:

‘A resident’s income tax base shall be the total amount of income from employment, self-employment in accordance with paragraph 3 of this Article, income from property and property rights, income

from capital, income from insurance and other income which the resident has received at home and abroad (unlimited tax liability), less the personal deduction referred to in Article 36 and/or Article 54 of this Law.’

- 10 Article 38(1) of the Opći porezni zakon (Tax Code) (*Narodne novine*, br. 147/2008, 18/2011, 78/2012, 136/2012, 73/2013, 26/2015, and 44/2016) provides:

‘For the purposes of this Law, a taxable person shall be deemed to be domiciled where he or she owns or possesses a dwelling for a continuous period of at least 183 days in one or two calendar years. Staying in the dwelling shall not be required.’

The dispute in the main proceedings and the question referred for a preliminary ruling

- 11 The applicant in the main proceedings concluded, with the Deutsche Stiftung für internationale rechtliche Zusammenarbeit (German Foundation for International Legal Cooperation; ‘the IRZ’), which has its headquarters in Bonn (Germany), a contract under which she was appointed as an expert in Project No 346-900 ‘Consolidation of the Justice System in Albania (Euralius IV)’, with a view to carrying out tasks in Albania during a minimum of 220 days in 2016. That project, financed by the European Union in the framework of the ‘IPA 2013’ national programme, was implemented by a consortium and the IRZ.
- 12 To that end, the applicant in the main proceedings, who had obtained from the competent Albanian authorities a work permit and an identity card, entered into a contract to rent a flat and performed her daily activities in an office in Tirana (Albania). She declared her residence in Albania and was covered by health insurance there. During that same period, the applicant in the main proceedings owned a flat in Croatia and was considered to be a tax resident by the Croatian tax authorities.
- 13 For carrying out her tasks as an expert, the IRZ paid the applicant in the main proceedings, by way of a salary and a subsistence allowance for 2016, a total of EUR 140 400.
- 14 By a tax decision of 20 December 2017, the tax administration of Zagreb (Croatia), Trnje branch, acting as tax authority of first instance, subjected the entirety of that amount to income tax in Croatia. The amount of tax to be paid by the applicant in the main proceedings by way of income tax, after deductions and tax rates had been applied, thus amounted to 458 045.30 kuna (HRK) (approximately EUR 62 000).
- 15 The applicant in the main proceedings lodged a complaint against that tax decision with the Ministry of Finance, on the ground, inter alia, that Article 26(2)(c) of the framework agreement precludes income tax from being charged in Croatia on the sums she received in her capacity as an expert in Albania.
- 16 By decision of 22 November 2021, the Ministry of Finance, while rejecting that argument, nevertheless upheld the complaint, annulled the tax decision and referred the case back to the tax authority of first instance, on the ground that it had failed to establish correctly the relevant facts concerning the income level of the applicant in the main proceedings and her tax residence in Croatia.

- 17 The applicant in the main proceedings then brought an action before the Upravni sud u Zagrebu (Administrative Court, Zagreb, Croatia), which is the referring court, seeking the annulment of the tax decision of 20 December 2017 and the decision of 22 November 2021.
- 18 In support of her action, the applicant in the main proceedings submits that it follows from both Article 26(2)(c) of the framework agreement and Article 12 of the Protocol (No 7) on the privileges and immunities of the European Union that income tax cannot be charged in Croatia on the amount paid by the IRZ. She states that experts who are nationals of other Member States and were appointed to work on the same project were not charged income tax in those Member States.
- 19 For its part, the Ministry of Finance submits that the framework decision does not bind the Croatian tax authorities and that Article 26(2)(c) thereof has the sole effect of precluding the Republic of Albania from taxing a sum such as that at issue in the main proceedings. Thus, according to that ministry, that sum is subject to income tax in Croatia, since the applicant in the main proceedings is resident in that Member State.
- 20 In its decision, the referring court states that only the interpretation of Article 26(2)(c) of the framework agreement is relevant to the resolution of the dispute in the main proceedings. Protocol (No 7) on the privileges and immunities of the European Union does not apply to the applicant in the main proceedings, since she is neither a member of staff nor an official of the European Union. That court states, furthermore, that, in accordance with the national law, the person concerned must, for the purposes of the case at hand, be regarded as a tax resident of Croatia, since she owned a dwelling in Croatia in 2016.
- 21 According to that court, since the Member States must, in the exercise of their powers of direct taxation, observe the restrictions which might result from EU law, it is essential to clarify the question whether such a restriction follows from Article 26(2)(c) of the framework agreement and, if that is the case, to determine its scope.
- 22 That court states that, if that provision is to be interpreted as conferring on the Republic of Albania the exclusive right to charge income tax on sums received by experts who are appointed on a long-term basis to work on an EU-funded IPA project, the Republic of Croatia cannot charge income tax on the income of the applicant in the main proceedings. Consequently, the tax authorities of that Member State are precluded from taking proceedings in respect of the applicant in the main proceedings for the purpose of establishing an obligation to pay income tax on that sum. In that case, the tax decision of 20 December 2017 and the decision of 22 November 2021 should be annulled.
- 23 According to the referring court, the question nevertheless arises whether the exemption of the sum at issue in the main proceedings from income tax in Albania leaves open the possibility on the part of the Member States to charge income tax on that sum. In that regard, it should be determined whether that exemption has the sole aim of protecting, by way of tax measures, the independence of experts appointed on a long-term basis who are nationals of a Member State from any possible influence of the country that is the beneficiary of the IPA project or whether it is also intended to enable Member States to charge tax on sums received by their nationals who are appointed as experts.

24 In those circumstances, the Upravni sud u Zagrebu (Administrative Court, Zagreb) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 26(2)(c) of the [framework agreement] be interpreted as excluding the power of a Member State, in this case [that of] the Republic of Croatia, to charge income tax on the remuneration which was paid in 2016 to one of its nationals, employed as a long-term expert, for tasks carried out in the territory of [the Republic of] Albania concerning a project whose beneficiaries are State institutions of the Republic of Albania and which is financed by the European Union under the 2013 instrument for pre-accession assistance (IPA)?’

Consideration of the question referred

25 By its question, the referring court asks, in essence, whether Article 26(2)(c) of the framework agreement must be interpreted as precluding legislation of a Member State that provides for the taxation, by way of income tax, of sums received by a tax resident of that Member State, who is neither an official nor a member of staff of the European Union, for tasks carried out in Albania under the IPA.

26 In that regard, it should be borne in mind that, in accordance with the settled case-law of the Court, in interpreting a provision of EU law, it is necessary to consider its wording, the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 20 October 2022, *Centre public d’action sociale de Liège (Withdrawal or suspension of a return decision)*, C-825/21, EU:C:2022:810, paragraph 41 and the case-law cited).

27 As regards the wording of Article 26(2)(c) of the framework agreement, it must be noted that that provision, which is designed to implement Article 7(3)(k) of Regulation No 718/2007, provides, in its first sentence, that the income from contracts concluded with the European Union is to be ‘taxable in Albania’ in accordance with the tax law of Albania, whilst stating, in its second sentence, that the persons ‘from’ the Member States who are executing contracts financed by the European Union must ‘be exempted from those taxes in Albania’.

28 It is thus clear from the very wording of the second sentence of Article 26(2)(c) of the framework agreement that the tax exemption it lays down for the benefit of persons who have, as a result of, in particular, their nationality or their place of residence, the status of tax residents of a Member State relates exclusively to income tax payable by those persons ‘in Albania’, pursuant to the first sentence of Article 26(2)(c), on account of an activity exercised by those persons in that third country in connection with a project financed by the European Union under the IPA.

29 By contrast, Article 26(2)(c) of the framework agreement does not address the issue of income tax that might, as the case may be, be payable by those persons in a Member State pursuant to that State’s tax legislation.

30 It thus appears that the wording of that provision alone already allows for the conclusion that it does not preclude a Member State such as, in the present case, the Republic of Croatia, from charging income tax on sums paid to an expert having his or her tax residence in that Member State for tasks carried out in Albania in connection with a project financed by the European

Union under the IPA, since that provision is limited to determining the scope of the powers of taxation of solely that third country vis-à-vis persons who exercise an activity in its territory in connection with such a project.

- 31 In accordance with the Court's case-law, an interpretation of a provision of EU law cannot have the result of depriving the clear and precise wording of that provision of all effectiveness. Thus, where the meaning of a provision of EU law is absolutely plain from its very wording, the Court cannot depart from that interpretation (judgment of 20 September 2022, *VD and SR*, C-339/20 and C-397/20, EU:C:2022:703, paragraph 71 and the case-law cited).
- 32 In any event, the literal interpretation of Article 26(2)(c) of that framework agreement as set out in paragraph 30 above is borne out by the context in which it occurs and the objectives pursued by the EU rules of which that provision is part.
- 33 In that regard, it must be borne in mind that, according to the Court's settled case-law, direct taxation falls within the competence of the Member States, with the Member States, however, being required to exercise that competence consistently with EU law (judgment of 22 December 2022, *Airbnb Ireland and Airbnb Payments UK*, C-83/21, EU:C:2022:1018, paragraph 41).
- 34 It follows that, outside the spheres in which EU tax law has been harmonised, the determination of the characteristics constituting the tax comes within the competence of the Member States, with due regard for their fiscal autonomy. This includes, in particular, the determination of the basis of assessment and the taxable event (see, to that effect, judgment of 8 November 2022, *Fiat Chrysler Finance Europe v Commission*, C-885/19 P and C-898/19 P, EU:C:2022:859, paragraph 73).
- 35 The framework agreement does not in the slightest aim to limit Member States' powers of direct taxation, but, as is apparent from Article 7(1) of Regulation No 718/2007, is only an instrument of cooperation concerning financial assistance provided by the European Union to Albania as a beneficiary third country.
- 36 In those circumstances, the tax exemption laid down in the second sentence of Article 26(2)(c) of the framework agreement, since it does not concern all persons involved in a project financed by the European Union under the IPA in Albania, referred to in the first sentence of that provision, but solely the tax residents of Member States who exercise an activity in that third country, is designed to prevent those persons from being subject to any possible double taxation of their income on account of that activity exercised outside the Member State where they are tax resident.
- 37 Furthermore, it is undisputed that, as the Commission submits, that tax exemption is designed to ensure the independence of tax residents of Member States who are appointed under the IPA vis-à-vis the authorities of the beneficiary third country concerned. An exemption from income tax in the Member State where they are tax resident would not contribute to the attainment of that objective.
- 38 Accordingly, the answer to the question referred is that Article 26(2)(c) of the framework agreement must be interpreted as not precluding legislation of a Member State that provides for the taxation, by way of income tax, of sums received by a tax resident of that Member State, who is neither an official nor a member of staff of the European Union, for tasks carried out in Albania under the IPA.

Costs

- 39 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Tenth Chamber) hereby rules:

Article 26(2)(c) of the Framework Agreement of 18 October 2007 between the Government of the Republic of Albania and the Commission of the European Communities on the rules for co-operation concerning EC-financial assistance to the Republic of Albania in the framework of the implementation of the assistance under the instrument for pre-accession assistance (IPA)

must be interpreted as not precluding legislation of a Member State that provides for the taxation, by way of income tax, of sums received by a tax resident of that Member State, who is neither an official nor a member of staff of the European Union, for tasks carried out in Albania under the IPA.

[Signatures]