Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

14 December 2016*

(Reference for a preliminary ruling — Freedom of movement of persons — Equal treatment — Social advantages — Regulation (EU) No 492/2011 — Article 7(2) — Financial aid for higher education studies — Students not residing in the territory of the Member State concerned subject to the condition that they be the children of workers who have been employed or who have pursued their professional activity in that Member State for a continuous period of at least five years — Indirect discrimination — Justification — Objective of increasing the proportion of residents with a higher education degree — Whether appropriate — Proportionality)

In Case C-238/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal administratif (Administrative Court, Luxembourg), made by decision of 20 May 2015, received at the Court on 22 May 2015, in the proceedings

Maria Do Céu Bragança Linares Verruga,

Jacinto Manuel Sousa Verruga,

André Angelo Linares Verruga

v

Ministre de l'Enseignement supérieur et de la Recherche,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Prechal, A. Rosas (Rapporteur), C. Toader and E. Jarašiūnas, Judges,

Advocate General: M. Wathelet,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 14 April 2016,

after considering the observations submitted on behalf of:

— Mrs Bragança Linares Verruga and others, by G. Thomas and L. Urbany, avocats,

— the Luxembourg Government, by D. Holderer, acting as Agent, and P. Kinsch, avocat,

* * Language of the case: French.

— the Danish Government, by M. Wolff and C. Thorning, acting as Agents,

— the Norwegian Government, by I. Jansen, C. Anker and M. Schei, acting as Agents,

— the European Commission, by M. Van Hoof, M. Kellerbauer and D. Martin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 June 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1).

2 The request has been made in proceedings between Mrs Maria do Céu Bragança Linares Verruga, Mr Jacinto Manuel Sousa Verruga and Mr André Angelo Linares Verruga and the ministre de l'Enseignement supérieur et de la Recherche (Minister for Higher Education and Research, Luxembourg) concerning the Minister's refusal to grant Mr Linares Verruga financial aid from the State for higher education studies.

Legal context

European Union law

3 Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475), as amended by Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 (OJ 2004 L 158, p. 77 and corrigenda OJ 2004 L 229, p. 35 and OJ 2005 L 197, p. 34) ('Regulation No 1612/68') was repealed, with effect from 16 June 2011, by Regulation No 492/2011.

4 Under the second paragraph of Article 41 of Regulation No 492/2011, references to Regulation No 1612/68 are to be construed as references to Regulation No 492/2011.

5 Article 7 of Regulation No 492/2011, which reproduced the wording of Article 7 of Regulation No 1612/68, provides:

'1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.

…'

6 Under the first sentence of Article 16(1) of Directive 2004/38, 'Union citizens who have resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there'.

7 Article 24 of that directive provides:

‘1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.

2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.’

Luxembourg law

8 Financial aid from the State for higher education studies is governed by the Law of 22 June 2000 on State financial aid for higher education studies (*Mémorial* A 2000, p. 1106, ‘the Law on State financial aid for higher education studies’), which has been amended several times.

9 That financial aid is granted in the form of a grant and a loan and may be applied for irrespective of the State in which the applicant proposes to pursue his higher education studies.

10 Following the amendments introduced by Article 1(2) of the Law of 26 July 2010 (*Mémorial* A 2010, p. 2040), Article 2 of the Law on State financial aid for higher education studies defined the persons entitled to that aid in the following terms:

‘A student admitted to higher education studies shall be entitled to receive financial aid from the State for higher education studies where he or she satisfies one of the following conditions:

(a) he or she is a Luxembourg national or a member of the family of a Luxembourg national and is domiciled in the Grand Duchy of Luxembourg, or

(b) he or she is a national of another Member State of the European Union or of one of the other States which is a party to the Agreement on the European Economic Area[, of 2 May 1992 (OJ 1994 L 1, p. 3),] or of the Swiss Confederation and resides, in accordance with Chapter 2 of the amended Law of 29 August 2008 on the free movement of persons and on immigration, in the Grand Duchy of Luxembourg as an employed person, a self-employed person, a person who retains that status, or a family member of one of the categories of persons above, or as a person who has acquired the right of permanent residence …

…’

11 The legislation applicable at the material time in the main proceedings is that resulting from the amendment of the Law on State financial aid for higher education studies by the Law of 19 July 2013 (*Mémorial* A 2013, p. 3214) (‘the amended Law of 22 June 2000’).

12 Article 2 *bis* of the amended Law of 22 June 2000, as inserted by Article 1(1) of the Law of 19 July 2013, provides:

'A student not residing in the Grand Duchy of Luxembourg may also receive financial aid for higher education studies where that student is the child of an employed or self-employed person who is a Luxembourg national or a national of the European Union or of another State party to the Agreement on the European Economic Area or of the Swiss Confederation, is employed or pursuing an activity in Luxembourg, and has been employed or has pursued an activity in Luxembourg for a continuous period of at least five years at the time the student makes the application for financial aid for higher education studies. Employment in Luxembourg must be for at least half the normal working hours applicable within the undertaking, under statute or by virtue of any collective labour agreement that may be in force. A self-employed worker is required to have been affiliated to the social security system in the Grand Duchy of Luxembourg under Article 1(4) of the Social Security Code for a continuous period of five years prior to the application for financial aid for higher education studies.'

13 The amended Law of 22 June 2000 was subsequently repealed by the Law of 24 July 2014 on State financial aid for higher education studies (*Mémorial* A 2014, p. 2188), which was not in force at the material time in the main proceedings. In particular, the condition that the parent of the non-resident student must have worked for a continuous period of five years at the time the application for financial aid is made was abandoned in favour of a condition that the parent of the non-resident student must have worked for a period of at least five years during a reference period of seven years prior to the date of the application for the financial aid.

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

14 Mr Linares Verruga, a student at the University of Liège (Belgium), resides with his parents, Mrs Bragança Linares Verruga and Mr Sousa Verruga, in Longwy (France). Mrs Bragança Linares Verruga has been working in Luxembourg as an employee since 15 May 2004, with a single break between 1 November 2011 and 15 January 2012. Mr Sousa Verruga worked in that Member State as an employee between 1 April 2004 and 30 September 2011 and between 4 December 2013 and 6 January 2014. Having set up a business in Luxembourg on 1 February 2014, Mr Sousa Verruga has worked there on a self-employed basis since that date.

15 Mr Linares Verruga applied, as a student, for the winter semester of the 2013/2014 academic year, for financial aid from the Luxembourg State for higher education studies in connection with the preparation of his degree.

16 By decision of 28 November 2013, the Minister for Higher Education and Research rejected that application for financial aid on the ground that the conditions laid down in Article 2 *bis* of the amended Law of 22 June 2000 were not satisfied.

17 On 23 December 2013, Mr Linares Verruga and his parents brought an administrative appeal against that decision. By decision of 14 January 2014, the Minister for Higher Education and Research dismissed that appeal.

18 Mr Linares Verruga also applied for financial aid from the Luxembourg State for higher education studies for the summer semester of the 2013/2014 academic year. By decision of 24 March 2014, the Minister for Higher Education and Research rejected that application for financial aid on grounds identical to those set out in his decision of 28 November 2013.

19 On 15 April 2014, Mr Linares Verruga and his parents then brought an action before the tribunal administratif (Administrative Court, Luxembourg) seeking alteration or annulment of the decisions of the Minister for Higher Education and Research of 28 November 2013, 14 January 2014 and 24 March 2014.

20 Before that court, Mr Linares Verruga and his parents have claimed that financial aid from the State for higher education studies constitutes a family benefit within the meaning of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1), to which every worker is entitled. In the alternative, they submit that that aid constitutes a social advantage, within the meaning of Article 7(2) of Regulation No 1612/68, so that the grant of that aid is subject to the principle of equal treatment set out in that provision.

21 The Luxembourg Government contends that the aid in question does not constitute a family benefit within the meaning of Regulation No 883/2004 and disputes the applicability of Regulation No 1612/68 to the dispute in the main proceedings. The Luxembourg Government also contends that the status of 'worker' of one of the parents of a student who does not reside in Luxembourg does not on its own suffice to confer on that student an entitlement to financial aid from the State for higher education studies. According to the Luxembourg Government, the judgment of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411), allowed the national legislature to make the grant of such aid conditional on the frontier worker having worked in the Member State concerned for a significant period. It is contended that, in the case in the main proceedings, the Verrugas do not satisfy that condition.

22 The tribunal administratif (Administrative Court) rejects, in the first place, the argument of Mr Linares Verruga and his parents that the financial aid from the State for higher education studies constitutes a family benefit within the meaning of Regulation No 883/2004. In this connection, it observes that that regulation concerns benefits linked to the compulsory contributions of employed and self-employed persons and that a benefit falls within the scope of that regulation only if it covers a social risk. The tribunal administratif (Administrative Court) considers that financial aid from the State for higher education studies is not intended to cover such a risk.

23 According to that court, the financial aid in question cannot be regarded as compensation for the removal of family allowances for students over 18 years of age. In designating the students as the persons entitled to the financial aid from the State for higher education studies, the Luxembourg legislature wished to affirm the concept of the 'autonomy of the student', namely the right of the student to pursue the higher education studies of his choosing, irrespective of the financial situation and wishes of his parents, in particular, with the aim of encouraging an increase in the proportion of persons with a higher education degree in the resident population of Luxembourg. The tribunal administratif (Administrative Court) states, in this connection, that the financial aid from the State for higher education studies is subject to academic conditions only and that it is granted in the form of a grant or a loan, the amounts of which vary only according to the student's personal financial and social situation and the enrolment fees to be borne by him.

24 As regards, in the second place, the arguments of Mr Linares Verruga and of his parents that the amended Law of 22 June 2000 is incompatible with Regulation No 1612/68, the tribunal administratif (Administrative Court) considers that, in so far as study finance granted by a Member State to the children of workers constitutes, for a migrant worker, a social advantage within the meaning of Article 7(2) of that regulation, that provision is applicable to the dispute in the main proceedings.

25 That court observes, furthermore, that, in the judgment of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411), the Court held that the condition of residence laid down in Article 2(b) of the Law on State financial aid for higher education studies, as amended by the Law of 26 July 2010, constitutes

indirect discrimination on the ground of nationality between persons residing in Luxembourg and those who, without residing in that Member State, are the children of frontier workers pursuing an activity there.

26 According to the tribunal administratif (Administrative Court), although, in that judgment, the Court stated that it was open to the Luxembourg legislature to require, for the purposes of granting the aid in question, that the frontier worker, the parent of the student, have worked in Luxembourg for a certain minimum period, the Court nevertheless did not rule that such a requirement had to constitute an exclusive condition and that a period of work of five years in that Member State had to be the only acceptable criterion. On the contrary, in that same judgment, the Court emphasised the overly exclusive nature of a rule favouring only one criterion for the purposes of assessing the degree of attachment of the frontier worker to Luxembourg society and emphasised the relevance of and justification for criteria that make it possible to identify a reasonable probability of the student returning to Luxembourg after completing his studies.

27 The tribunal administratif (Administrative Court) notes, next, that Mr Linares Verruga was refused the grant of financial aid from the State for higher education studies because of a break of two and a half months in his mother's employment in Luxembourg, notwithstanding the fact that she has been pursuing such an activity for an overall period of almost eight years, whereas, in the same circumstances, a worker resident in the Member State in question would not have met with such a refusal.

28 In those circumstances, the tribunal administratif (Administrative Court) is uncertain whether the condition laid down in Article 2 *bis* of the amended Law of 22 June 2000 is excessive. It observes that indirect discrimination is in principle prohibited, unless it is objectively justified, that is to say, it is appropriate for ensuring the attainment of a legitimate objective and does not go beyond what is necessary to attain that objective. In this connection, the court notes that the Luxembourg Government puts forward as justification the need to ensure that a link exists between the frontier worker and Luxembourg society that makes it possible to assume that, having received the aid from the State in order to finance his studies, the student, the child of such a worker, will return to Luxembourg in order to apply the knowledge acquired for the benefit of that Member State's economic development.

29 According to the tribunal administratif (Administrative Court), the Luxembourg Government is aware of the excessive and discriminatory nature of the requirement laid down in Article 2 *bis* of the amended Law of 22 June 2000, since the Law of 24 July 2014 on State financial aid for higher education studies replaced the condition of a continuous period of work of five years with the condition of a total period of work of five years during a reference period of seven years, with a view to making it possible for breaks in work due, inter alia, to periods of unemployment, to be taken into account. That court considers, however, that, despite that amendment to the conditions for the grant of such aid, the question of the compatibility of the amended Law of 22 June 2000 with Regulation No 1612/68 is still relevant to the decision as to how the decisions of the Minister for Higher Education and Research at issue in the main proceedings are to be treated.

30 In those circumstances, the tribunal administratif (Administrative Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is the condition, imposed on students not residing in the Grand Duchy of Luxembourg by Article 2 *bis* of the amended Law of 22 June 2000, which does not take into account any other connecting factor, namely that they must be the children of workers who have been employed or have carried out their activity in Luxembourg for a continuous period of at least five years at the time the application for financial aid is made, justified by the considerations relating to education policy and budgetary policy put forward by the Luxembourg State, and appropriate and proportionate in each case in relation to the objective pursued, namely of bringing about an increase in the proportion of persons

with a higher education degree while seeking to ensure that those persons, having benefited from the possibility offered by the system of aid concerned in order to finance their studies — undertaken as the case may be abroad — will return to Luxembourg in order to apply their knowledge for the benefit of the economic development of that Member State?'

Consideration of the question referred

31 By its question, the referring court asks, in essence, whether Article 7(2) of Regulation No 492/2011 must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which, with the aim of encouraging an increase in the proportion of residents with a higher education degree, makes the grant of financial aid for higher education studies to a non-resident student conditional on at least one of that student's parents having worked in that Member State for a minimum and continuous period of five years at the time the application for financial aid is made, but which does not lay down such a condition in respect of a student residing in the territory of that Member State.

Preliminary observations

32 In the case that gave rise to the judgment of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411), the Court has already had to consider the Luxembourg legislation on State financial aid for higher education studies then resulting from the Law on State financial aid for higher education studies, as amended by the Law of 26 July 2010.

33 The Court was thus asked about the compatibility with Article 7(2) of Regulation No 1612/68 of national legislation which made the grant of financial aid for higher education studies conditional on residence by the student and thereby gave rise to a difference in treatment between persons who reside in Luxembourg and those who, not being residents of that Member State, are the children of frontier workers pursuing an activity in that Member State.

34 The Court held that the difference in treatment which arose from the fact that a condition of residence was imposed on students who are the children of frontier workers constituted indirect discrimination on the ground of nationality, which is in principle prohibited, unless it is objectively justified (see, to that effect, judgment of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 46).

35 In this connection, the Court held that the condition of residence laid down in the Law on State financial aid for higher education studies, as amended by the Law of 26 July 2010, was appropriate for attaining the objective in the public interest, acknowledged at the level of the European Union, of promoting higher education and of significantly increasing the proportion of Luxembourg residents who hold a higher education degree (judgment of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraphs 53, 56 and 68).

36 By contrast, in its analysis of whether the residence condition was necessary, the Court held that it went beyond what was necessary in order to attain the objective of increasing the proportion of residents with a higher education degree, to the extent that it precluded the taking into account of other elements potentially representative of the actual degree of attachment of the applicant for the financial aid in question with the society or with the labour market of the Member State concerned, such as the fact that one of the parents, who continues to support the student, is a frontier worker who has stable employment in that Member State and has already worked there for a significant period of time (judgment of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 83).

37 Following the judgment of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411), the Law of 19 July 2013 amended the Law on State financial aid for higher education studies so as to extend the benefit of that aid to the student who does not reside in Luxembourg provided that that student is the child of an employed or self-employed person who is a Luxembourg national or a national of the European Union employed or pursuing an activity in Luxembourg, and that that worker has been employed or has pursued an activity in Luxembourg for a continuous period of at least five years at the time the student makes the application for financial aid for higher education studies.

38 In order to answer the question referred by the referring court, it is necessary to examine whether legislation such as that resulting from that amendment gives rise to possible discrimination and, if so, whether it is objectively justified.

The existence of discrimination

39 Under Article 7(2) of Regulation No 492/2011, the wording of which is the same as that in Article 7(2) of Regulation No 1612/68, a worker who is a national of a Member State is to enjoy, in the territory of another Member State, the same social and tax advantages as national workers. That provision equally benefits both migrant workers resident in a host Member State and frontier workers employed in that Member State while residing in another Member State (see, to that effect, judgments of 27 November 1997, *Meints*, C-57/96, EU:C:1997:564, paragraph 50, and 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 37).

40 It follows from settled case-law that assistance granted for maintenance and education in order to pursue university studies evidenced by a professional qualification constitutes, for the migrant worker, a social advantage, within the meaning of Article 7(2) of Regulation No 1612/68 (judgments of 14 June 2012, *Commission* v *Netherlands*, C-542/09, EU:C:2012:346, paragraph 34, and 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 38), on which provision the child of the migrant worker may himself rely if, under national law, that assistance is granted directly to the student (see, to that effect, judgments of 26 February 1992, *Bernini*, C-3/90, EU:C:1992:89, paragraph 26; 14 June 2012, *Commission* v *Netherlands*, C-542/09, EU:C:2012:346, paragraph 48; and 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 40).

41 The principle of equal treatment laid down in Article 45 TFEU and in Article 7 of Regulation No 1612/68 prohibits not only direct discrimination on grounds of nationality but also all indirect forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result (see judgment of 13 April 2010, *Bressol and Others*, C-73/08, EU:C:2010:181, paragraph 40).

42 The national legislation at issue in the main proceedings makes the grant of financial aid for higher education studies conditional on residence by the student in the territory of Luxembourg or, in the case of students not residing in Luxembourg, on their being the children of workers who have been employed or have pursued a professional activity in Luxembourg for a continuous period of at least five years at the time the application for financial aid is made. Even if it applies equally to Luxembourg nationals and to nationals of other Member States, such a condition of a minimum and continuous period of work is not laid down in respect of students who reside in the territory of Luxembourg.

43 Such a distinction based on residence is liable to operate mainly to the detriment of nationals of other Member States, as non-residents are in the majority of cases foreign nationals (see, to that effect, judgments of 14 June 2012, *Commission* v *Netherlands*, C-542/09, EU:C:2012:346, paragraph 38, and 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 44).

44 It therefore constitutes indirect discrimination on the ground of nationality which is permissible only if it is objectively justified. In order to be justified, it must be appropriate for securing the attainment of a legitimate objective and must not go beyond what is necessary to attain that objective.

The existence of a legitimate objective

45 In its written observations, the Luxembourg Government contends that the objective pursued by the amended Law of 22 June 2000 is identical to the social objective that was relied on in order to justify the legislation applicable in the case that gave rise to the judgment of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411). That objective is to significantly increase in Luxembourg the proportion of residents with a higher education degree.

46 In paragraphs 53 and 56 of the judgment of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411), the Court held that the social objective relied on by the Luxembourg Government in order to justify the legislation applicable in the case that gave rise to that judgment and aiming to promote higher education is an objective in the public interest acknowledged at the level of the European Union. Thus, an action undertaken by a Member State in order to ensure that its resident population is highly educated pursues a legitimate objective which can justify indirect discrimination on grounds of nationality.

47 There remains to be examined whether the condition of a continuous period of work of five years at the time the application for the study grant is made is appropriate and necessary in order to attain that objective.

The appropriateness of the condition of the minimum and continuous period of work

48 According to the Luxembourg Government, whose opinion is endorsed in essence by the Danish and Norwegian Governments, the condition of the minimum and continuous period of work in Luxembourg of five years is intended to ensure that the financial aid is granted only to students who have a connection with Luxembourg society such that there is a high probability that they will settle in Luxembourg and become integrated in the Luxembourg labour market after completing their higher education studies. That objective will be attained if the parent, a frontier worker, has stable employment in Luxembourg and has already worked there for a significant period, as this is an element representative of the actual degree of attachment to the society or labour market of Luxembourg. Such circumstances give grounds for assuming that the example of the parent will be such as to influence, with a sufficient degree of probability, the career choice of the student.

49 In the first place, it should be recalled that, according to settled case-law, the fact that migrant and frontier workers have participated in the labour market of a Member State creates, in principle, a sufficient link of integration with the society of that State, allowing them to benefit from the principle of equal treatment, as compared with national workers, as regards social advantages (see, to that effect, judgments of 14 June 2012, *Commission* v *Netherlands*, C-542/09, EU:C:2012:346, paragraph 65, and 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 63).

50 The link of integration arises, in particular, from the fact that migrant workers contribute to the financing of the social policies of the host Member State through the taxes and social contributions which they pay in that State by virtue of their employment there. They must, therefore, be able to benefit from them under the same conditions as national workers (see, to that effect, judgments of 14 June 2012, *Commission* v *Netherlands*, C-542/09, EU:C:2012:346, paragraph 66, and 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 63).

51 However, the Court has already accepted that indirectly discriminatory national legislation restricting the grant to frontier workers of social advantages within the meaning of Article 7(2) of Regulation No 1612/68 where there is not a sufficient connection to the society in which they are pursuing their activities without residing there may be objectively justified and proportionate to the objective pursued (see, to that effect, judgments of 18 July 2007, *Hartmann*, C-212/05, EU:C:2007:437, paragraphs 30 to 35 and 37; 18 July 2007, *Geven*, C-213/05, EU:C:2007:438, paragraph 26; 11 September 2007, *Hendrix*, C-287/05, EU:C:2007:494, paragraphs 54 and 55; and 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 64).

52 Thus, in paragraphs 26 and 28 to 30 of the judgment of 18 July 2007, *Geven* (C-213/05, EU:C:2007:438), the Court held that Article 7(2) of Regulation No 1612/68 did not preclude legislation of a Member State which provided that only workers who, by their choice of residence, had established a real link with the society of that Member State and, in the case of frontier workers who carried on an occupation in that Member State while residing in another Member State, who carried on an occupation exceeding the threshold of minor employment, would be able to claim a social advantage within the meaning of that provision, because an objective contribution to the national labour market was also found to constitute a valid factor of integration into the society of the Member State concerned.

53 In the legislation applicable in the case that gave rise to the judgment of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411), the condition of prior residence of the student in Luxembourg was considered to be the only condition capable of establishing the connection to that Member State.

54 The Court held that such a residence condition was appropriate for attaining the objective of promoting higher education and of significantly increasing the proportion of Luxembourg residents who hold a higher education degree, but that it was too exclusive in nature (judgment of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 76). The existence of a reasonable probability that the recipients of the aid will return to settle in Luxembourg and make themselves available to the labour market of that Member State, in order to contribute to its economic development, could be established on the basis of elements other than such a condition (judgment of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 77).

55 Amongst those elements, the Court indicated that the fact that the parents of the student concerned have been employed for a significant period in the Member State providing the aid applied for might be appropriate for the purposes of showing the actual degree of attachment with the society or labour market of that State (judgment of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 78).

56 In the main proceedings, as in the case that gave rise to the judgment of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411), first, the recipients of the financial aid are not the workers themselves but their non-Luxembourg-resident children who wish to pursue studies, whether in Luxembourg or elsewhere, and, second, the link with Luxembourg society may, in this respect, be less apparent in the case of the children of frontier workers than in the case of the children of migrant workers resident in Luxembourg.

57 Accordingly, it seems legitimate that the State providing the aid would seek to ensure that the frontier worker does in fact have a link of integration with Luxembourg society, by requiring a sufficient attachment in order to combat the risk of 'study grant forum shopping', referred to by the governments which submitted observations.

58 In this connection, the condition of a minimum period of work in Luxembourg on the part of the frontier worker parent, required by the amended Law of 22 June 2000, in order for the children of frontier workers to be able claim financial aid from the State for higher education studies, is,

admittedly, of such a kind as to establish such a connection on the part of those workers to Luxembourg society and a reasonable probability that the student will return to Luxembourg after completing his studies.

The necessity of the condition of the minimum and continuous period of work

59 In order to comply with EU law, the condition relating to the minimum and continuous period of work at the time the application for financial aid is made must not go beyond what is necessary to attain the objective pursued.

60 At paragraph 76 of the judgment of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411), the Court held that, by imposing a condition of residence such as that at issue in the case that gave rise to that judgment, the Grand Duchy of Luxembourg had favoured an element which was not necessarily the sole representative element of the actual degree of attachment of the party concerned to that Member State.

61 The Court thus indicated that a sufficient attachment of the student in question to the Grand Duchy of Luxembourg, such as to make it possible to conclude that there is a reasonable probability that he will return to settle in and make himself available to the labour market of that Member State, may also be derived from the fact that that student resides alone or with his parents in a Member State which borders upon the Grand Duchy of Luxembourg and that, for a significant period of time, his parents have worked in Luxembourg and live near to that Member State (judgment of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 78).

62 With regard to the possibilities open to the Luxembourg legislature, the Court indicated that, where the aid granted consists in, for example, a loan, a system of financing which made the grant of that loan, or even the outstanding balance thereof, or its non-reimbursement, conditional on the student who receives it returning to Luxembourg after his studies abroad in order to work and reside there, could attain the objective pursued, without adversely affecting the children of frontier workers (judgment of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 79).

63 Furthermore, in order to avoid the risk of 'study grant forum shopping' and to ensure that the frontier worker has a sufficient link with Luxembourg society, the Court mentioned, at paragraph 80 of the judgment of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411), the possibility of making the grant of the financial aid conditional on the frontier worker, the parent of the student who does not reside in Luxembourg, having worked in that Member State for a certain minimum period of time.

64 In that regard, the Luxembourg government submits that the national legislature used the possibility afforded it under paragraph 80 of the judgment of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411), drawing inspiration, by analogy, from Article 24(2) of Directive 2004/38, which refers to the conditions for the acquisition of a right of permanent residence, set out in Article 16(1) of that directive. Article 16(1) expressly provides for the acquisition of a right of permanent residence by 'Union citizens who have resided legally for a continuous period of five years in the host Member State'.

65 However, as the Advocate General has observed in points 83 to 85 of his Opinion, the analogy with Article 16(1) and Article 24(2) of Directive 2004/38, suggested by the Luxembourg Government, is not relevant for the purposes of justifying the requirement for a continuous period of work of five years imposed by the national legislation at issue in the main proceedings.

66 Article 16 of Directive 2004/38, which lays down a condition of a minimum continuous period of residence in order to ensure the grant of the right of permanent residence to persons settled on a long-term basis in the host Member State, concerns, as the Court has expressly noted in paragraph 80

of the judgment of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411), a context other than that of equal treatment of national workers and migrant workers. Furthermore, Article 24(2) of Directive 2004/38 states expressly that the possibility afforded by that provision of refusing, prior to the acquisition of a right of permanent residence, the grant of maintenance aid for studies, including vocational training, consisting in student grants or student loans, applies only to persons other than workers, self-employed persons, persons who retain such status and members of their families.

67 It is therefore only in order to illustrate how EU law makes it possible, in the context of economically inactive Union citizens, to avoid the risk of 'study grant forum shopping', that the Court referred, in paragraph 80 of the judgment of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411), to Article 16(1) and to Article 24(2) of Directive 2004/38.

68 It should be noted that, in the case in the main proceedings, Mr Linares Verruga was refused the financial aid from the State for higher education studies even though his parents had worked in Luxembourg for a total period exceeding five years, with only a few short breaks during the five years preceding the application for financial aid.

69 A rule such as that laid down in the national legislation at issue in the main proceedings, which makes the grant of financial aid for higher education studies to non-resident students conditional on a parent having worked in Luxembourg for a minimum continuous period of five years at the time the application for financial aid is made, without permitting the competent authorities to grant that aid where, as in the main proceedings, the parents, notwithstanding a few short breaks, have worked in Luxembourg for a significant period of time, in this case for almost eight years, in the period preceding that application, involves a restriction that goes beyond what is necessary in order to attain the legitimate objective of increasing the number of residents holding a higher education degree, inasmuch as such breaks are not liable to sever the connection between the applicant for financial aid and the Grand Duchy of Luxembourg.

70 It follows from all the foregoing considerations that the answer to the question referred is that Article 7(2) of Regulation No 492/2011 must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which, with the aim of encouraging an increase in the proportion of residents with a higher education degree, makes the grant of financial aid for higher education studies to a non-resident student conditional on at least one of that student's parents having worked in that Member State for a minimum and continuous period of five years at the time the application for financial aid is made, but which does not lay down such a condition in respect of a student residing in the territory of that Member State.

Costs

71 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Second Chamber) hereby rules:

Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which, with the aim of encouraging an increase in the proportion of residents with a higher education degree, makes the grant of financial aid for higher education studies to a non-resident student conditional on at least one of that student's parents having worked in that Member State for a

minimum and continuous period of five years at the time the application for financial aid is made, but which does not lay down such a condition in respect of a student residing in the territory of that Member State.

[Signatures]