ECLI:EU:C:2016:955

JUDGMENT OF THE COURT (Second Chamber)

15 December 2016 (*)

(Reference for a preliminary ruling — Freedom of movement of persons — Worker's rights — Equal treatment — Social advantages — Financial aid for the pursuit of higher education studies — Requirement of a parent-child relationship — Concept of 'child' — Child of a spouse or registered partner — Contribution towards the maintenance of that child)

In Joined Cases C-401/15 to C-403/15,

THREE REQUESTS for a preliminary ruling under Article 267 TFEU from the Cour administrative (Higher Administrative Court, Luxembourg), made by decisions of 22 July 2015, received at the Court on 24 July 2015, in the proceedings

Noémie Depesme (C-401/15),

Saïd Kerrou (C-401/15),

Adrien Kauffmann (C-402/15),

Maxime Lefort (C-403/15)

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: A. Calot Escobar,

after considering the observations submitted on behalf of:

– Ms Depesme and Mr Kerrou, by P. Peuvrel, avocat,

– Mr Kauffmann, by S. Jacquet, avocat,

– Mr Lefort, by S. Coï, avocat,

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

– the European Commission, by D. Martin and M. Kellerbauer, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 June 2016,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 45 TFEU and 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 requests have been made in three sets of proceedings between Ms Noémie Depesme and Mr Saïd Kerrou, Mr Adrien Kauffman, and Mr Maxime Lefort, and the Ministre de l'Enseignement supérieur et de la Recherche (Minister for Higher Education and Research, Luxembourg; 'the Minister'), concerning the Minister's refusal to grant Ms Depesme, Mr Kauffman and Mr Lefort State financial aid for the pursuit of higher education studies for the academic year 2013/2014.

Legal context

EU law

3 Under Article 7 of 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):

'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.

…’

4 Article 10 of Regulation No 1612/68 provided:

‘1. The following shall, irrespective of their nationality, have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State:

(a) his spouse and their descendants who are under the age of 21 years or are dependants;

…’

5 Article 10 of Regulation No 1612/68 was repealed by 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 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 corrigenda in OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

6 Recitals 3 and 5 to Directive 2004/38 state:

‘(3) Union citizenship should be the fundamental status of nationals of the Member States when they exercise their right of free movement and residence. It is therefore necessary to codify and review the existing Community instruments dealing separately with workers, self-employed persons, as well as students and other inactive persons in order to simplify and strengthen the right of free movement and residence of all Union citizens.

…

(5) The right of all Union citizens to move and reside freely within the territory of the Member States should, if it is to be exercised under objective conditions of freedom and dignity, be also granted to their family members, irrespective of nationality. For the purposes of this Directive, the definition of “family member” should also include the registered partner if the legislation of the host Member State treats registered partnership as equivalent to marriage.’

7 Article 2 of that directive provides:

‘For the purposes of this Directive:

…

(2) “family member” means:

(a) the spouse;

(b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;

(c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);

…

…’

8 Regulation No 1612/68 was repealed and replaced, with effect from 16 June 2011, by Regulation No 492/2011. Article 7 of Regulation No 492/2011 reproduced the wording of Article 7 of Regulation No 1612/68.

9 Recital 1 of Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ 2014 L 128, p. 8) is worded as follows:

‘The free movement of workers is a fundamental freedom of Union citizens and one of the pillars of the internal market in the Union enshrined in Article 45 of the Treaty on the Functioning of the European Union (TFEU). Its implementation is further developed by Union law aiming to guarantee the full exercise of rights conferred on Union citizens and the members of their family. “Members of their family” should be understood as having the same meaning as the term defined in point (2) of Article 2 of Directive [2004/38/EC], which applies also to family members of frontier workers.’

10 Article 1 of that directive provides:

‘This Directive lays down provisions which facilitate the uniform application and enforcement in practice of the rights conferred by Article 45 TFEU and by Articles 1 to 10 of Regulation [No 492/2011]. This Directive applies to Union citizens exercising those rights and to members of their family (“Union workers and members of their family”).’

11 According to Article 2 of that directive:

‘1. This Directive applies to the following matters, as referred to in Articles 1 to 10 of Regulation [No 492/2011], in the area of freedom of movement for workers:

…

(c) access to social and tax advantages;

…

2. The scope of this Directive is identical to that of Regulation [No 492/2011].’

Luxembourg law

12 State financial aid for higher education studies was governed, at the time of the facts in the main proceedings, by the loi du 22 juin 2000 concernant l’aide financière de l’État pour études supérieures (Law of 22 June 2000 on State financial aid for higher education studies) (*Mémorial* A 2000, p. 1106), as amended by the Law of 19 July 2013 (*Mémorial* A 2013, p. 3214) (‘the amended Law of 22 June 2000’).

13 The Law of 19 July 2013, which was adopted to give effect to the judgment of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411) and which made amendments to the Law of 22 June 2000 relating solely to the academic year 2013/2014, inserted Article 2 *bis* into the Law of 22 June 2000.

14 Article 2 *bis* of the amended Law of 22 June 2000 was worded as follows:

‘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[, of 2 May 1992 (OJ 1994 L 1, p. 3)] 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.’

15 The amended Law of 22 June 2000 was repealed by the loi du 24 juillet 2014 concernant l’aide financière de l’État pour études supérieures (Law of 24 July 2014 on State financial aid for higher education studies) (Mémorial A 2014, p. 2188).

16 Article 3 of the Law of 24 July 2014 provides:

‘A student or pupil, as defined in Article 2, hereinafter referred to as a “student”, who fulfils one of the following conditions may benefit from State financial aid for higher education studies:

…

(5) a student not resident in the Grand Duchy of Luxembourg who:

…

(b) is the child of a worker 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 employed or pursuing an activity in the Grand Duchy of Luxembourg at the time when the student's application for financial aid for higher education studies is made, provided that the worker is continuing to contribute to the maintenance of the student and that the worker has been employed or has pursued an activity in the Grand Duchy of Luxembourg for at least five years at the time of the student's application for financial aid for higher education studies, within a reference period of seven years counting back from the date of the application for financial aid for higher education studies or, by way of derogation, the person retaining worker status met the aforementioned criterion of five years out of seven when he or she finished work.

…'

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

17 The disputes in the main proceedings concern the conditions for the granting of financial aid from the Luxembourg State, for the academic year 2013/2014, to non-Luxembourg-resident students for the pursuit of higher education studies, laid down by the amended Law of 22 June 2000.

18 In accordance with that law, the financial aid in question is granted to students who are not resident in Luxembourg on the condition, first, that the student is the child of a worker, whether employed or self-employed, who is a Luxembourg national or an EU national and, second, that the worker has been employed or pursuing an activity in Luxembourg for a continuous period of at least five years at the time the application for financial aid is made.

19 It is common ground that Ms Depesme and Mr Kauffmann, French nationals residing in France, and Mr Lefort, a Belgian national living in Belgium, applied to the Luxembourg authorities for State financial aid for higher education studies – in France in the case of Ms Depesme and Mr Kauffmann, and in Belgium in the case of Mr Lefort – for the academic year 2013/2014.

20 By letters dated, respectively, 26 September, 17 October and 12 November 2013, the Minister rejected those applications on the ground that Ms Depesme, Mr Kauffmann and Mr Lefort did not satisfy the conditions laid down by the amended Law of 22 June 2000.

21 It is clear from the three orders for reference that the students in question each lodged an application for aid asserting, in this connection, only their stepfathers' status as an employed person in Luxembourg. The Minister then took the view that Ms Depesme, Mr Kauffmann and Mr Lefort could not be regarded as 'children' of a frontier worker, in accordance with the condition laid down in Article 2 *bis* of the amended Law of 22 June 2000, given that only their stepfathers worked in Luxembourg.

22 On 20 December 2013, Ms Depesme brought an action before the tribunal administratif de Luxembourg (Administrative Court, Luxembourg) for annulment of the Minister's decision refusing her application. Her stepfather, Mr Kerrou, relying on his status as an employed person in Luxembourg and claiming to provide maintenance for Ms Depesme, intervened voluntarily in the proceedings brought by her.

23 On 29 January and 25 April 2014, Mr Lefort and Mr Kauffmann each brought a similar action against the decisions refusing their applications before the same court.

24 By judgments of 5 January 2015, the tribunal administratif (Administrative Court) declared the applications of Ms Depesme, Mr Kauffmann and Mr Lefort admissible but unfounded.

25 Ms Depesme, Mr Kerrou, Mr Kauffmann and Mr Lefort lodged appeals against those judgments before the referring court.

26 Ms Depesme and Mr Kerrou state, inter alia, that Mr Kerrou, who has been a frontier worker in Luxembourg for 14 years, married Ms Depesme's mother on 24 May 2006 and that, since then, all three have lived together in the same household. Mr Kerrou contributes to the maintenance of his spouse's child, including in relation to her higher education studies, and was also in receipt of Luxembourg family benefits for his stepdaughter prior to the commencement of her higher education studies.

27 Mr Kauffmann states that his parents have been separated since 2003, they divorced on 20 June 2005, and his mother was awarded sole custody of the couple's children. He indicates that, on 10 March 2007, his mother married Mr Kiefer, a frontier worker in Luxembourg, and Mr Kauffmann has lived with him under the same roof since that time. Mr Kiefer has provided for Mr Kauffmann's maintenance and education, and has received Luxembourg family benefits in respect of Mr Kauffmann.

28 Mr Lefort states that his father is deceased, that his mother married Mr Terwoigne, a frontier worker in Luxembourg for over five years, and that, since that marriage, he has lived with his mother and stepfather in the same household. Mr Terwoigne contributes to the financial cost of running the household and also contributes to Mr Lefort's higher education costs.

29 The Luxembourg State contends that the judgments of the tribunal administratif (Administrative Court) of 5 January 2015 should be upheld and submits that

Ms Depesme, Mr Kauffmann and Mr Lefort are not the children of their stepfathers within the legal meaning of the term.

30 The Cour administrative (Higher Administrative Court, Luxembourg) notes that the requirement of a parent-child relationship, laid down by Article 2 *bis* of the amended Law of 22 June 2000, was introduced in order to take account of the judgment of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411).

31 According to the referring court, the resolution of the three disputes pending before it depends on the interpretation of the concept of 'child' of a frontier worker, as referred to in Article 2 *bis* of the amended Law of 22 June 2000, in the light of that judgment and the observance of the principle of non-discrimination provided for under Article 7(2) of Regulation No 492/2011. The referring court accordingly states that 'the relevant criterion highlighted by [that judgment] is the actual degree of attachment of the non-resident student, who has applied for financial aid for higher education studies from the Grand Duchy of Luxembourg, with the society or the labour market of Luxembourg'. In a situation where that connection does not directly originate from the student, on the ground that he is not resident, but from the frontier worker of reference, the referring court is uncertain as to whether a strictly legal or a more economic concept of the parent-child relationship between the student seeking State financial aid for higher education studies and the frontier worker is to be adopted. According to the referring court, those two interpretations are *a priori* conceivable. If the concept of a 'child' for the purposes of the amended Law of 22 June 2000 refers to that of a dependent child, the further question would then arise as to whether the extent to which the frontier worker provides for the student has any impact. The Cour administrative (Higher Administrative Court) specifies that that question relates to a comparison of the level of provision for the student by the frontier worker, on the one hand, and by his parent(s) on the other. Finally, the referring court is uncertain as regards the significance of intensity of the relationship between the frontier worker and one of the parents of the student.

32 In those circumstances, the Cour administrative (Higher Administrative Court) decided to stay the proceedings and to refer the following question, which is worded in identical terms in Cases C-401/15 to C-403/15, apart from an addition in Case C-403/15 which is noted in brackets, to the Court for a preliminary ruling:

'In order properly to meet the requirements of non-discrimination under Article 7(2) of [Regulation No 492/2011], together with Article 45(2) TFEU [Case C-403/15: "against the background of Article 33(1) of the Charter of Fundamental Rights of the European Union together with, if appropriate, Article 7 of the Charter"], when taking into account the actual degree of attachment of a non-resident student, who has applied for financial aid for higher education studies, with the society and with the labour market of Luxembourg, being the Member State in which a frontier worker has been employed or has carried out his activity in the conditions referred to in Article 2 *bis* of the [amended Law of 22 June 2000], in direct consequence of the judgment of the Court of Justice of 20 June 2013 [*Giersch and Others*, C-20/12, EU:C:2013:411],

– should the requirement that the student be the "child" of that frontier worker be taken to mean that he must be the frontier worker's "direct descendant in the first degree whose relationship with his parent is legally established", with the emphasis being placed on the child-parent relationship established between the student and the frontier worker, which is supposed to underlie the abovementioned attachment, or

– should the emphasis be placed on the fact that the frontier worker "continues to provide for the student's maintenance" without necessarily being connected to the student through a legal child-parent relationship, in particular where a sufficient link of communal life can be identified, of such a kind as to establish a connection between the frontier worker and the student's parent with whom the child-parent relationship is legally established?

From the latter perspective, where the contribution, by definition non-compulsory, of the frontier worker is not exclusive but made in parallel with that of the parent or parents connected with the student through a legal child-parent relationship, and therefore in principle under a legal duty to maintain the student, must that contribution satisfy certain criteria as regards its substance?'

Consideration of the question referred

33 By its question, the referring court asks, in essence, whether Article 45 TFEU and Article 7(2) of Regulation No 492/2011 must be interpreted as meaning that a child of a frontier worker, who is able to benefit indirectly from the social advantages referred to in Article 7(2) of Regulation No 492/2011, such as study finance granted by a Member State to the children of workers pursuing or who have pursued an activity in that Member State, means only a child who has a child-parent relationship with that worker or also a child of the spouse or registered partner of that worker. In the latter case, the referring court is uncertain, in essence, about the impact of the extent of the contribution by the frontier worker to the maintenance of that child on that child's right to receive financial aid with a view to pursuing higher education studies, such as the financial aid at issue in the main proceedings.

34 As a preliminary point, it must be recalled that Article 45(2) TFEU provides that freedom of movement for workers is to entail the abolition of any discrimination based on nationality as regards employment, remuneration and other conditions of work and employment (judgment of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 34).

35 The Court has held that Article 7(2) of Regulation No 1612/68, the wording of which was reproduced in Article 7(2) of Regulation No 492/2011, is the particular expression, in the specific area of the grant of social advantages, of the principle of equal treatment enshrined in Article 45(2) TFEU, and must be accorded the same interpretation as that provision (see judgments of 23 February 2006, *Commission* v *Spain*, C-205/04, not published, EU:C:2006:137, paragraph 15; of 11 September 2007, *Hendrix*, C-287/05,

EU:C:2007:494, paragraph 53; and of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 35).

36 According to Article 7(2) of Regulation No 1612/68 and Article 7(2) of Regulation No 492/2011, 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.

37 The Court has repeatedly held that, in relation to Article 7(2) of Regulation No 1612/68, 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 judgments of 18 July 2007, *Geven*, C-213/05, EU:C:2007:438, paragraph 15; of 14 June 2012, *Commission* v *Netherlands*, C-542/09, EU:C:2012:346, paragraph 33; of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 37; and of 14 December 2016, *Bragança Linares Verruga and Others*, C-238/15, EU:C:2016:949, paragraph 39).

38 Furthermore, according to settled case-law, assistance granted for maintenance and education in order to pursue university studies evidenced by a professional qualification constitutes a social advantage within the meaning of Article 7(2) of Regulation No 1612/68 (judgments of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 38, and of 14 December 2016, *Bragança Linares Verruga and Others*, C-238/15, EU:C:2016:949, paragraph 40 and the case-law cited).

39 The Court has also found that study finance granted by a Member State to the children of workers constitutes, for the migrant worker, a social advantage within the meaning of Article 7(2) of Regulation No 1612/68, where the worker continues to support the child (judgment of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 39 and the case-law cited).

40 Moreover, according to the case-law of the Court, the members of a migrant worker's family are the indirect recipients of the equal treatment granted to the worker under Article 7(2) of Regulation No 1612/68. Since the grant of funding for studies to a child of a migrant worker constitutes a social advantage for the migrant worker, that child may himself rely on that provision in order to obtain that funding if, under national law, such funding is granted directly to the student (judgment of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 40 and the case-law cited).

41 In the cases in the main proceedings, actions have been brought before the referring court by non-Luxembourg-resident students to the refusal by that Member State to grant those students State financial aid for higher education studies. Those students submit that they qualify for that aid on account of their family ties to a frontier worker who, while not being their father, has become the spouse of their mother after their parents' divorce or, in the case of Mr Lefort, after the death of his father.

42 It is therefore necessary to examine whether the term 'child of a migrant worker' in the sense in which it is used in the case-law of the Court relating to Article 7(2) of

Regulation No 1612/68, which is applicable to Article 7(2) of Regulation No 492/2011, and in particular in the judgment of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411), includes the children of the spouse or recognised partner under national law of that worker.

43 In that regard, it is important to note that Article 10(1)(a) of Regulation No 1612/68, repealed by Directive 2004/38, provided that the spouse of that worker 'and their descendants who are under the age of 21 years or are dependants', irrespective of their nationality, had the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State.

44 The Court interpreted that provision as meaning that both the descendants of that worker and those of his spouse had the right to install themselves with that worker. To give a restrictive interpretation to that provision, to the effect that only the children common to the migrant worker and his spouse enjoyed that right, would have failed to have regard to the aim of integration of members of the families of migrant workers pursued by Regulation No 1612/68 (see, to that effect, judgment of 17 December 2002, *Baumbast and R,* C-413/99, EU:C:2002:493, paragraph 57).

45 Furthermore, the Court has previously held that the members of a worker's family, who qualify indirectly for the equal treatment accorded to migrant workers by Article 7 of Regulation No 1612/68, were family members within the meaning of Article 10 of Regulation No 1612/68 (see, to that effect, judgment of 18 June 1987, *Lebon*, 316/85, EU:C:1987:302, paragraph 12).

46 It must be stated that Article 10 of Regulation No 1612/68 was repealed by Directive 2004/38 on the ground that the EU legislature wished to codify, in one legislative text, the right to family reunification for workers, self-employed persons, students and other inactive persons, in order to simplify and strengthen that right.

47 In the context of that reform, the legislature again restated, in Article 2(2)(c) of that directive, the concept of 'family member', as it has been defined by the Court in relation to Regulation No 1612/68, specifying that it is to mean the direct descendants of that citizen who are under the age of 21 years or are dependants, 'and the direct descendants of his spouse or partner' recognised under national law.

48 As the Advocate General observed in point 43 of his Opinion, the judgment of 20 June 2013, *Giersch and Others*, (C-20/12, EU:C:2013:411) and the term 'child' used therein are part of the jurisprudential and legislative context set out in paragraphs 42 to 47 above.

49 It is therefore clear that the term 'child of a migrant worker' in the sense used in the case-law of the Court in relation to Article 7(2) of Regulation No 1612/68 must be interpreted as including the children of the spouse or recognised partner under national law of that worker.

50 The Luxembourg Government's argument that Directive 2004/38 relates only to the right of Union citizens and members of their family freely to move about and reside in Member States, and not to the right of frontier workers to benefit from the same social advantages as national workers provided for in Article 7(2) of Regulation No 492/2011, does not cast doubt on that interpretation.

51 It follows from the development of EU legislation, as set out in paragraphs 46 and 47 above, and from the fact that Article 7(2) of Regulation No 492/2011 simply reproduced the wording of Article 7(2) of Regulation No 1612/68 without amendment, that the family members able to benefit indirectly from equal treatment under Regulation No 492/2011 are those family members within the meaning of Directive 2004/38. There is nothing to suggest that the EU legislature intended to establish, as regards family members, a watertight distinction between the scope of Directive 2004/38 and the scope of Regulation No 492/2011, under which family members of a Union citizen, within the meaning of Directive 2004/38, would not necessarily be the same persons as the family members of that citizen when he is considered in his capacity as a worker.

52 Moreover, the fact that the term 'child of a frontier worker', who is able to benefit indirectly from the principle of equality enshrined in Article 7(2) of Regulation No 492/2011, should be interpreted in the light of the concept of 'family members' as defined by the case-law of the Court in relation to Regulation No 1612/68 and restated in Article 2 of Directive 2004/38, is borne out by Directive 2014/54, the deadline for transposition into national law of which expired on 21 May 2016.

53 It is clear from recital 1 of Directive 2014/54, under which the free movement of workers 'is further developed by Union law aiming to guarantee the full exercise of rights conferred on Union citizens and the members of their family', that the expression '"members of their family" should be understood as having the same meaning as the term defined in point (2) of Article 2 of Directive [2004/38], which applies also to family members of frontier workers'.

54 Under Article 2(2) of Directive 2014/54, the scope of that directive is identical to that of Regulation No 492/2011. Under to Article 1 of Directive 2014/54, the subject matter of that directive moreover consists of provisions to facilitate the uniform application and enforcement in practice of the rights conferred by Article 45 TFEU and by Articles 1 to 10 of Regulation No 492/2011.

55 As long as they meet the definition of 'family member', within the meaning of Article 2(2)(c) of Directive 2004/38, of a frontier worker who himself has sufficient links with the society of the host Member State, it is therefore clear that the children of the spouse or partner recognised by the host Member State of that frontier worker may also be considered to be the children of that frontier worker for the purposes of qualifying for the right to receive financial aid for the pursuit of higher education studies, which is considered to be a social advantage within the meaning of Article 7(2) of Regulation No 492/2011.

56 The referring court also asks, in essence, what impact the extent of the contribution, by the frontier worker, to the maintenance of his spouse's child, has on the right of that child to receive financial aid such as that at issue in the main proceedings.

57 In that regard, it is clear from the case-law referred to in paragraph 39 above that, where the migrant worker continues to support the child, the study finance granted by the Member State to that child constitutes a social advantage for that worker within the meaning of Article 7(2) of Regulation No 1612/68. It should be noted further that Article 10 of Regulation No 1612/68, repealed by Directive 2004/38, provided that a worker's 'spouse and their descendants who are under the age of 21 years or are dependants' had a right, irrespective of their nationality, to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State. The EU legislature, by Directive 2004/38, also takes the view that 'direct descendants [of a Union citizen] who are under the age of 21 or are dependants and those of the spouse or [recognised] partner' are to be regarded as being 'family members' within the meaning of Article 2(2)(c) of that directive.

58 The Court took the view that the status of dependent member of a family, within the meaning of Article 10 of Regulation No 1612/68, did not presuppose a right to maintenance. If that were the case, the composition of the family that Article 10 provided for would depend on national legislation, which varies from one State to another, and that would lead to a lack of uniformity in the application of EU law. The Court therefore interpreted Article 10(1) and (2) of Regulation No 1612/68 as meaning that the status of dependent member of a family is the result of a factual situation. The person having that status is a member of the family who is supported by the worker and there is no need to determine the reasons for recourse to the worker's support or to raise the question whether the person concerned is able to support himself by taking up paid employment. That interpretation is dictated by the principle that the provisions establishing the free movement of workers, which constitutes one of the foundations of the Union, must be construed broadly (see, to that effect, judgment of 18 June 1987, *Lebon*, 316/85, EU:C:1987:302, paragraphs 21 to 23).

59 However, as the Advocate General noted in point 67 of his Opinion, such an interpretation applies also where the contribution of a frontier worker to the maintenance of the children of his spouse or recognised partner is at issue.

60 It must therefore be held, in the present case, that the status of dependent member of a family is the result of a factual situation, which it is for the Member State and, if appropriate, the national courts to assess. The status of a family member of a frontier worker who is dependent on that worker may, when it relates to the case of a child of a spouse or recognised partner of that worker, be evidenced by objective factors, such as a joint household shared by that worker and the student, and it is not necessary to determine the reasons for the frontier worker's contribution to the maintenance of the student or make a precise estimation of its amount.

61 However, the Luxembourg Government submits that it would be difficult to require the competent authorities to find out, in each case, whether and to what extent the frontier worker, who is the step-parent of a student applying for the financial aid at issue in the main proceedings, contributes to the maintenance of that student.

62 First, it must be stated that the EU legislature takes the view that the children are, in any case, presumed to be dependent until the age of 21 years, as is apparent, in particular, from Article 2(2)(c) of Directive 2004/38.

63 Second, it is apparent from the documents before the Court that the Luxembourg legislature itself made the grant of State financial aid for higher education studies, pursuant to Article 3 of the Law of 24 July 2014, which is applicable from the academic year 2014/2015, subject to the condition that the worker 'is continuing to contribute to the maintenance of the student'. The Luxembourg Government cannot therefore reasonably maintain that a condition of contribution to the maintenance of the student cannot be verified by the authorities.

64 In the light of all the above considerations, the answer to the question referred is that Article 45 TFEU and Article 7(2) of Regulation No 492/2011 must be interpreted as meaning that a child of a frontier worker, who is able to benefit indirectly from the social advantages referred to in the latter provision, such as study finance granted by a Member State to the children of workers pursuing or who have pursued an activity in that Member State, means not only a child who has a child-parent relationship with that worker, but also a child of the spouse or registered partner of that worker, where that worker supports that child. The latter requirement is the result of a factual situation, which it is for the national authorities and, if appropriate, the national courts, to assess, and it is not necessary for them to determine the reasons for that contribution or make a precise estimation of its amount.

Costs

65 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 45 TFEU and 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 meaning that a child of a frontier worker, who is able to benefit indirectly from the social advantages referred to in the latter provision, such as study finance granted by a Member State to the children of workers pursuing or who have pursued an activity in that Member State, means not only a child who has a child-parent relationship with that worker, but also a child of the spouse or registered partner of that worker, where that worker supports that

child. The latter requirement is the result of a factual situation, which it is for the national authorities and, if appropriate, the national courts, to assess, and it is not necessary for them to determine the reasons for that contribution or make a precise estimation of its amount.

[Signatures]

** Language of the case: French.