Questions referred

1. [Is there] a conflict between national legislation and [EU] law and, in particular, between Article 19(5) and Article 19bis of Presidential Decree 633/72 (the Italian national legislation which governs the mechanism for calculating the non-deductible proportion of VAT), on the one hand, and Article 17(2)(a) of Directive [77/388/EC] of 17 May 1977, ([1]) on the other?

2. [Is] the difference in treatment between Italian healthcare professionals, deemed to be 'final consumers' (liable to VAT) and healthcare professionals of other Member States of the European Union (such as Belgium, Bulgaria, Germany, Greece, France and Spain), deemed to be 'intermediary operators' (with the right to deduct VAT), [compatible with EU law]?

3. [Is there] unequal treatment as regards the rules on VAT between the various Member States of the European Union, given that unlike the situation in Italy where healthcare services are exempt from VAT, in other Member States of the European Union (Belgium, Bulgaria, Germany, Greece, France and Spain) the same healthcare services are subject to VAT, with the result that different rates of VAT and, therefore, a different right to deduct are applied to the same healthcare services?

4. [Is] the inequality between Italian healthcare professionals (including Casa di Cura Città di Parma) and the professionals of other Member States of the European Union (Belgium, Bulgaria, Germany, Greece, France and Spain) — in that the healthcare services provided by the latter are subject to value added tax and, as a result, unlike Italian healthcare professionals, they have the corresponding right to deduct and/or to reimbursement of VAT paid on purchases — [compatible with EU law]?'

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

Request for a preliminary ruling from the Bundesfinanzgericht (Austria) lodged on 3 November 2020 — XO v Finanzamt Waldviertel

(Case C-574/20)

(2021/C 35/41)

Language of the case: German

Referring court

Bundesfinanzgericht

Parties to the main proceedings

Appellant: XO

Respondent authority: Finanzamt Waldviertel

Questions referred

Question 1, concerning the validity of secondary legislation:

Are Articles 4 and 7 of Regulation (EC) No 883/2004, ([1]) as amended by Regulation (EU) No 465/2012, ([2]) ('Regulation No 883/2004', 'the New Coordination Regulation' or 'the Basic Regulation') valid?

Question 2:

Is Article 7 of Regulation No 883/2004, in particular its title 'Waiving of residence rules', to be interpreted as meaning that it precluded the legally valid adoption of the general rules governing the indexation of family allowances by reference to the purchasing-power conditions in the State of residence — Paragraph 8a of the Familienlastenausgleichsgesetz 1967 (1967 Law on compensation for family expenses; 'the FLAG'), point 2 of Paragraph 33(3) of the Einkommensteuergesetz 1988 (1988 Law on income tax; 'the EStG') and the Familienbeihilfe-Kinderabsetzbetrag-EU-Anpassungsverordnung (Order adapting family allowances and tax credits for the European Union — in so far as they entail a decrease in the value of family benefits for certain Member States?

Question 3:

Is the prohibition of the reduction of cash benefits laid down in Article 7 of Regulation No 883/2004, in particular its wording 'cash benefits … shall not be subject to any reduction, amendment, suspension, withdrawal or confiscation', to be interpreted as meaning that that provision did not preclude the legally valid adoption of the provisions governing the indexation of family allowances by reference to the purchasing power conditions in the State of residence — Paragraph 8a of the FLAG and point 2 of Paragraph 33(3) of the EStG — in so far as the value of the family allowances in question is to be increased?

Questions 4 and 5, concerning the expert report on which the legislative amendment was based:

Question 4:

Are Articles 7 and 67 of Regulation No 883/2004 to be interpreted — and delimited in relation to one other — to the effect that Article 7 relates to the law-making process in which the residence rule is created as a general, abstract rule by the Member State's parliament, whereas Article 67 concerns the law-making process for an individual, specific rule in an actual specific case and is addressed directly to the institution, as initially established under Title II of the Basic Regulation?

Question 5:

Are Articles 67, 68(1) and (2) of Regulation No 883/2004 and Article 60(1) of Regulation No 987/2009 to be interpreted as meaning that, like their predecessor provisions — Articles 73 and 76 of Regulation No 1408/71 and Article 10 of Regulation No 574/72 — they are to be applied in conjunction with one another and therefore understood only in context, and they pursue, in conjunction with one another and in compliance with the anti-accumulation principle, the objective of ensuring that the person concerned does not lose any entitlements, as guaranteed by the classification and hierarchisation of the Member States prescribed in Article 68(1) and (2) and by the express requirement that the competent Member State whose legislation is applicable on a secondary basis will be required to make a supplementary payment if necessary, with the result that an isolated interpretation of Article 67 of Regulation No 883/2004, such as that in the expert report, is not permissible?

Question 6:

Are the concept of 'general application' of a regulation and the wording 'It shall be binding in its entirety and directly applicable' in the second paragraph of Article 288 TFEU to be interpreted as meaning that they also precluded the valid adoption of the competent institutions' individual rules which build on the rules governing indexation and that the administrative decision under appeal in the main proceedings has not acquired the force of formal *res judicata* (*Bestandskraft*)?

Question 7:

Do Paragraph 53(1) of the FLAG, in the original version of the Budgetbegleitgesetz (Law accompanying the budget) of 29 December 2000, BGBl 1142/2000, and Paragraph 53(4) of the FLAG in the original version of the Federal Law of 4 December 2018 amending the 1967 Law on compensation for family expenses, the 1988 Law on income tax and the Entwicklungshelfergesetz (Law on development aid workers), BGBl I 83/2018, infringe the prohibition of the transposition of regulations within the meaning of the second paragraph of Article 288 TFEU?

Questions 8 to 12, which are to be examined together:

Question 8:

Are the requirement of equality of treatment with nationals under Article 4 of Regulation No 883/2004 and the underlying prohibition of discrimination under Article 45(2) TFEU to be interpreted as meaning that they are complied with only if a migrant worker is treated in the same way as a national in a domestic situation and is therefore notified of the family allowance in advance and is paid the family allowance monthly in advance on an ongoing basis pursuant to Paragraph 12, in conjunction with Paragraphs 2 and 8, of the FLAG, or is there compliance with the requirement of equality of treatment with nationals if a migrant worker is treated in the same way as a national who, like him, is in a cross-border situation pursuant to Paragraph 4 of the FLAG, but, in the second case, by way of derogation, it is only annually after the end of the calendar year that he receives the family allowance under Paragraph 4(4) of the FLAG for the calendar year in question?

Question 9:

Is the suspension of entitlements to family benefits by virtue of other conflicting legislative provisions up to the amount provided for by the legislation designated as having priority, as prescribed in the second sentence of Article 68(2) of Regulation No 883/2004, to be interpreted as precluding a Member State's anti-accumulation rule, such as Paragraph 4(1) to (3) of the FLAG, which, in a situation such as the present one, entitles Austria, as the Member State with primary responsibility, to reduce family allowances by entitlements to 'an equivalent foreign allowance' in the other Member State, because the rule of EU law has already prevented anti-accumulation and the anti-accumulation rule in Paragraph 4(1) to (3) of the FLAG therefore serves no purpose?

Question 10:

Is the suspension of entitlements to family benefits by virtue of other conflicting legislative provisions up to the amount provided for by the legislation designated as having priority, as prescribed in the second sentence of Article 68(2) of Regulation No 883/2004, to be interpreted as meaning that the Member State whose legislation is applicable on a secondary basis and which must comply with the suspension of family benefits provided for in its legislation due to the requirement under EU law is obliged to reject an application of a migrant worker or a member of his family or a person otherwise entitled under the legislation of the Member State and not to grant family benefit up to the amount provided for by the legislation designated as having priority, even if an approach based solely on the situation of the Member State — possibly on an alternative legal basis — would permit the granting of that family benefit?

Question 11:

If Question 10 is answered in the affirmative, the question then arises as to whether the Member State whose legislation is applicable on a secondary basis and which must comply with the suspension of family benefits provided for in its legislation due to the requirement under EU law, but which is not required to provide the differential supplement for the sum which exceeds the amount provided for by the first legislation, owing to the lack of such a sum, would have to reject an application on the ground that the suspension under the second sentence of Article 68(2) of Regulation No 882/2004 precludes the granting of entitlements to family allowances?

Question 12:

Must Article 68(1) and (2) of Regulation No 883/2004 be interpreted as meaning that, in a situation such as that at issue in the main proceedings, points 6 and 7 of form E 411 of the Administrative Commission on Social Security for Migrant Workers, which are to be completed by the Member State whose legislation is applicable on a secondary basis, no longer meet the information requirements of the Member State whose legislation is applicable on a primary basis, because the Member State with primary responsibility needs to be informed by the other Member State, within the meaning of Questions 10 and 11, that the latter Member State will be enforcing the suspension under the second sentence of Article 68 (2) of Regulation No 883/2004, as a result of which there is no need to examine the Member State's legal situation, which includes earnings thresholds?

Question 13:

Is the obligation to recast legislation, as developed by the Court of Justice in settled case-law on the basis of the principle of loyalty under Article 4(3) TEU, to be understood as meaning that it could also be discharged by the Verfassungsgerichtshof (Constitutional Court, Austria) pursuant to a request from the referring court?

Question 14:

Are point (b) of the first paragraph of Article 267 TFEU on questions concerning the validity of secondary law, which is mandatory even for a referring court not adjudicating at last instance, and the referring court's obligation, which is linked to questions concerning validity, to ensure the application of valid EU law by adopting, by decision, an interim order refusing leave for an appeal on a point of law, owing to the primacy of application of EU law, to be interpreted as precluding rules of Member States such as Article 133(4) and (9) of the Bundes-Verfassungsgesetz (Federal Constitutional Law; 'the B-VG'), in conjunction with Paragraph 25a(1) to (3) and Paragraph 30a(7) of the Verwaltungsgerichtshofgesetz (Law on the Supreme Administrative Court; 'the VwGG'), which grant, at national level, the parties to the underlying administrative proceedings a review of legal protection conducted by the Verwaltungsgerichtshof (Supreme Administrative Court, Austria) against a decision of the Verwaltungsgericht (Administrative Court, Austria) in the form of an 'extraordinary' appeal on a point of law?

([1]) Regulation 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, corrigendum in OJ 2004 L 200, p. 1).

([2]) Regulation of the European Parliament and of the Council of 22 May 2012 amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (OJ 2012 L 149, p. 4).

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 4 November 2020 — CC v Pensionsversicherungsanstalt

(Case C-576/20)

(2021/C 35/42)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant: CC

Respondent: Pensionsversicherungsanstalt

Questions referred

1. Is Article 44(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems ([1]) to be interpreted as precluding child-raising periods spent in other Member States from being taken into account by a Member State competent to grant an old-age pension — under whose legislation the applicant for a pension has pursued an activity as an employed or self-employed person throughout her working life, with the exception of those child-raising periods — solely on the ground that the applicant for a pension was not pursuing an activity as an employed or self-employed person at the date when, under the legislation of that Member State, the child-raising period started to be taken into account for the child concerned?

   If the first question is answered in the negative:

2. Is the first clause of Article 44(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems to be interpreted as meaning that, under its legislation, the Member State which is competent under Title II of Regulation (EC) No 883/2004 on the coordination of social security systems does not take child-raising periods into account generally, or that it does not take them into account only in a specific case?

([1]) OJ 2009 L 284, p. 1.