Provisional text

JUDGMENT OF THE COURT (First Chamber)

15 October 2026 (*)

(Reference for a preliminary ruling – Privileges and immunities of the European Union – Article 343 TFEU – Protocol (No 7) on the privileges and immunities of the European Union – Officials and other servants of the European Union – Article 12 – Exemption from national taxes – Gift tax – First paragraph of Article 13 – Liability to that tax in the official's Member State of residence which is neither the State of origin nor the State in which that official performs his or her duties – Domicile for tax purposes of officials and other servants of the European Union)

In Case C-275/25 [Kolwager], (i)

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesfinanzhof (Federal Fiscal Court, Germany), made by decision of 20 November 2024, received at the Court on 9 April 2025, in the proceedings

Finanzamt B

v

A,

THE COURT (First Chamber),

composed of F. Biltgen, President of the Chamber, S. Gervasoni (Rapporteur), A. Kumin, I. Ziemele, and M. Bošnjak, Judges,

Advocate General: N. Emiliou,

Registrar: V. Di Bucci,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– A, by D. Salm, Rechtsanwalt,

– the German Government, by J. Möller and P.-L. Krüger, acting as Agents,

– the European Commission, by M. Heller and L. Hohenecker, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 April 2026,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the first sentence of the first paragraph of Article 13 of Protocol (No 7) on the privileges and immunities of the European Union (OJ 2012 C 326,

p. 266) (‘Protocol No 7’).

2 The request has been made in proceedings between A, a member of staff of the European Investment Bank (EIB), and Finanzamt B (Tax Office, Germany; ‘the tax authority’), concerning the payment of gift tax in Germany.

Legal context

European Union law

FEU Treaty

3 Article 343 TFEU provides:

‘The [European] Union shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol of 8 April 1965 on the privileges and immunities of the European Union. The same shall apply to the European Central Bank and the European Investment Bank.’

Protocol No 7

4 Protocol No 7 contains a single recital, worded as follows:

‘Considering that, in accordance with Article 343 of the Treaty on the Functioning of the European Union and Article 191 of the Treaty establishing the European Atomic Energy Community (“EAEC”), the European Union and the EAEC shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks.’

5 Under Article 12 of that protocol:

‘Officials and other servants of the Union shall be liable to a tax for the benefit of the Union on salaries, wages and emoluments paid to them by the Union, in accordance with the conditions and procedure laid down by the European Parliament and the Council [of the European Union], acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned.

They shall be exempt from national taxes on salaries, wages and emoluments paid by the Union.’

6 Article 13 of that protocol provides:

‘In the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Member States of the Union, officials and other servants of the Union who, solely by reason of the performance of their duties in the service of the Union, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Union, shall be considered, both in the country of their actual residence and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a member of the Union. This provision shall also apply to a spouse, to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.

Movable property belonging to persons referred to in the preceding paragraph and situated in the territory of the country where they are staying shall be exempt from death duties in that country; such property shall, for the assessment of such duty, be considered as being in the country of domicile for tax purposes, subject to the rights of third countries and to the possible application of provisions of international conventions on double taxation.

Any domicile acquired solely by reason of the performance of duties in the service of other international organisations shall not be taken into consideration in applying the provisions of this Article.'

7 Article 17 of that protocol is worded as follows:

'Privileges, immunities and facilities shall be accorded to officials and other servants of the Union solely in the interests of the Union.

…'

8 The first paragraph of Article 21 of Protocol No 7 provides:

'This Protocol shall also apply to the European Investment Bank, to the members of its organs, to its staff and to the representatives of the Member States taking part in its activities, …'

German law

Law on inheritance and gift tax

9 The Erbschaft- und Schenkungsteuergesetz (Law on inheritance and gift tax), as published on 27 February 1997 (BGBl I, 1997, p. 378), in the version applicable to the dispute in the main proceedings, provides, in Paragraph 1 thereof, entitled 'Taxable transactions':

'(1) Inheritance tax (gift tax) shall apply to:

1. acquisitions on death;

2. gifts *inter vivos*;

…

(2) Unless provided otherwise, the provisions of this Law relating to the acquisition of assets on death shall apply also to gifts and restricted gifts …'

10 Paragraph 2 of that law, entitled 'Personal liability to tax', provides:

'(1) Liability to tax arises

1. in the cases referred to in Paragraph 1(1)(1) to (3) in relation to the entirety of the transferred assets (unlimited tax liability), where the deceased, on the date of death, the donor, on the date of making the gift, or the acquirer, on the date on which the tax becomes chargeable (Paragraph 9), is a resident (*Inländer*). The following shall be deemed residents:

   (a) natural persons having a domicile or their habitual residence in Germany …'

11 Paragraph 7 of that law, entitled 'Gifts *inter vivos*', provides:

'(1) The following shall be considered to be gifts *inter vivos*:

1. any transfer made between living persons, provided that the recipient is enriched at the donor's expense;

…'

12 Paragraph 9 of that law, entitled 'Chargeability of tax', is worded as follows:

'(1) Tax shall become chargeable:

1. in the case of transfers on death, on the death of the testator, …

2. in the case of gifts *inter vivos*, at the time the gift is made;

…'

Tax Code

13 The Abgabenordnung (Tax Code), as published on 1 October 2002 (BGBl I, 2002, p. 3866, corrected by BGBl I, 2003, p. 61), in the version applicable to the dispute in the main proceedings, provides, in Paragraph 8 thereof, entitled 'Domicile':

'A person shall be domiciled where he or she occupies a dwelling under circumstances that indicate that that person will maintain and use that dwelling.'

14 Paragraph 9 of that code, entitled 'Habitual residence', provides:

'A person shall have his or her habitual residence in the place where he or she stays in circumstances that indicate that that person is not merely temporarily staying in that place or that area. A continuous stay of more than six months shall always and from the outset be regarded as habitual residence within the scope of this Code; short-term interruptions shall not be taken into account. The second sentence shall not apply if the stay is exclusively for the purposes of a visit, of rest, of a cure, or for similar private purposes, and does not last for more than one year.'

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

15 A has been a member of staff of the EIB since 1995, when he moved his residence from Austria to Luxembourg in order to take up his duties at that body. After his marriage in 2010, he moved once more, in order to live with his spouse in Germany. At the same time, he continued to use his flat in Luxembourg.

16 In 2013, he received from his brother, who resides in Austria, a gift in the amount of EUR 300 000.

17 By a decision of 13 April 2017, the German tax authority set the amount of tax payable by A on that gift at EUR 56 000.

18 The administrative appeal brought by A against that decision, in which he relied on the first sentence of the first paragraph of Article 13 of Protocol No 7 and claimed that he should be treated as if his domicile for tax purposes were exclusively situated in Austria, was rejected by a decision of 1 August 2019. That authority found that A had established an additional domicile for tax purposes in Germany, in parallel with his domicile for tax purposes in Austria, that that domicile in Austria was fictitious and that A was therefore subject to unlimited liability to gift tax in Germany.

19 By a judgment of 16 September 2021, the Finanzgericht Rheinland-Pfalz (Fiscal Court, Rhineland-Palatinate, Germany) upheld the action that had been brought by A, on the ground that the criterion set out in the first sentence of the first paragraph of Article 13 of Protocol No 7, relating to the reason for establishing residence in a country other than that of domicile for tax purposes, had to be assessed at the date of A's entry into the service of the European Union. According to that court, subsequent changes, in particular a move for personal reasons, are irrelevant as long as the member of staff remains employed in the service of the European Union and his or her actual residence has a geographical link with the place where that person performs his or her duties.

20 The German tax authority brought an appeal on a point of law (*Revision*) before the Bundesfinanzhof (Federal Fiscal Court, Germany), which is the referring court, alleging an infringement of the first sentence of the first paragraph of Article 13 of Protocol No 7. That authority submits that that provision does not apply to gift tax and is not, in any event, relevant in a situation, such as that in the present case, where,

after taking up his or her duties, the servant of the European Union establishes an additional residence in another Member State for personal reasons.

21 The referring court considers it possible that gift tax may come within the scope of the first sentence of the first paragraph of Article 13 of Protocol No 7, but has, at the same time, doubts in that respect.

22 According to that court, if that provision applied to gift tax, A could be regarded as not having a domicile for tax purposes in Germany in respect of that tax. That would be the case if that provision had to be interpreted as meaning that, apart from his domicile for tax purposes in the Member State of origin, in the present case Austria, an official or other servant of the European Union cannot have any other domicile for tax purposes. However, that court hesitates to adopt such an interpretation where, in the course of his or her career, an official or other servant of the European Union establishes his or her residence in a Member State, in the present case Germany, other than that in which that person performs his or her duties, in the present case Luxembourg, while retaining a de facto domicile in that latter Member State.

23 That is why the referring court considers it necessary, first, to clarify whether the first sentence of the first paragraph of Article 13 of Protocol No 7 applies to gift tax.

24 That court observes that gift tax is not expressly referred to in that provision, unlike income tax, wealth tax and death duties. It also points out that German law treats gift tax as an independent type of tax which, moreover, differs from income tax, wealth tax and death duties, and that those differences militate against its inclusion in the material scope of the first sentence of the first paragraph of Article 13 of Protocol No 7.

25 Nevertheless, the referring court acknowledges that gift tax could be equated with income tax, as referred to in the first sentence of the first paragraph of Article 13 of Protocol No 7, since it taxes enrichment on the part of the recipient. According to that court, some Member States, such as the Kingdom of Denmark, the Republic of Estonia, the Republic of Lithuania and the Czech Republic, apply income tax to gifts.

26 The referring court considers that gift tax could also be equated with death duties within the meaning of the first sentence of the first paragraph of Article 13 of Protocol No 7. That tax constitutes the necessary complement to death duties, since it would be easy to circumvent those duties by means of a gift. In German law, under the concept of 'anticipated inheritance', gift tax is levied essentially according to the same legal rules as death duties. Other Member States, such as the Kingdom of Spain, the French Republic, the Italian Republic and the Republic of Poland, proceed in the same way.

27 In the event that the first sentence of the first paragraph of Article 13 of Protocol No 7 applies to gift tax, the referring court asks, in the second place, whether that provision precludes an official of the European Union who, solely by reason of the performance of his or her duties in the service of the European Union, has established his or her residence in the territory of a Member State other than his or her Member State of origin from having a domicile for tax purposes in a Member State other than that in which he or she performs his or her duties, for the purposes of liability to gift tax.

28 In those circumstances the Bundesfinanzhof (Federal Fiscal Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does [the first sentence of the first paragraph of Article 13 of Protocol No 7] apply to the levying of gift tax?

(2) If the first question referred is answered in the affirmative: Does that provision preclude an official or other servant of the [European] Union who establishes his or her residence in the territory of a Member State other than his or her Member State of origin solely by reason of the performance of his or her duties in the service of the [European] Union from establishing an additional domicile for tax purposes in a Member State other than the State in which he or she performs his or her duties if, at the same time, he or she retains [a de facto domicile] in the State in which he or she performs his or her duties?'

Consideration of the questions referred

The first question

29 By its first question, the referring court asks, in essence, whether the first sentence of the first paragraph of Article 13 of Protocol No 7 must be interpreted as applying to a tax on gifts.

30 As a preliminary point, it must be recalled that, in accordance with the Court's settled case-law, in interpreting a provision of EU law, it is necessary to consider its wording, the context in which it occurs and the objectives pursued by the rules of which it is part (judgments of 17 November 1983, *Merck*, 292/82, EU:C:1983:335, paragraph 12, and of 1 August 2025, *Alace and Canpelli*, C-758/24 and C-759/24, EU:C:2025:591, paragraph 91).

31 In the first place, under the first sentence of the first paragraph of Article 13 of Protocol No 7, 'in the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Member States of the Union, officials and other servants of the Union who, solely by reason of the performance of their duties in the service of the Union, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Union, shall be considered, both in the country of their actual residence and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a member of the Union'.

32 It is clear from its wording that that provision distinguishes between, on the one hand, the domicile for tax purposes of officials and other servants of the European Union, which they are deemed to have maintained in the Member State in which that domicile was established at the time of their entry into the service of the European Union ('the State of origin'), and, on the other hand, the actual residence which those officials and other servants establish in the territory of a Member State other than their State of origin ('the State of residence'), solely by reason of the performance of their duties in the service of the European Union.

33 Thus, under that provision, despite their establishment in a Member State other than their State of origin, the officials and other servants of the European Union who have established themselves in the territory of that other Member State solely by reason of the performance of their duties in the service of the European Union are to maintain their domicile for tax purposes in their State of origin in the application of income tax, wealth tax and death duties.

34 It must be stated that gift tax is not referred to in the first sentence of the first paragraph of Article 13 of Protocol No 7, which expressly refers to only three categories of tax, namely income tax, wealth tax and death duties, without defining them.

35 In that regard, the German Government submits that the concepts of income tax, wealth tax and death duties should be defined by reference to national law.

36 It is true that the Court held that the income tax payable in the State of origin of an official on the basis of the rental value of the home which that official owned in the State of residence had to be determined according to the criteria of the national law of the State of origin (see, to that effect, judgment of 25 May 1993, *Kristoffersen*, C-263/91, EU:C:1993:207, paragraphs 11 to 13). Nevertheless, the fact that the first sentence of the first paragraph of Article 13 of Protocol No 7 lays down a rule determining the domicile for tax purposes of officials and other servants of the European Union for the purpose of applying national taxes does not mean that the categories of tax to which that rule is applicable correspond to the definitions given to them by the legislative provisions of Member States.

37 Such an interpretation would be incompatible with the need to ensure the uniform application of the tax regime for officials and other servants of the European Union established by Protocol No 7 (see, to that effect, judgment of 17 June 1993, *X*, C-88/92, EU:C:1993:246, paragraph 14).

38 First, such an interpretation would make the scope of the first sentence of the first paragraph of Article 13 of Protocol No 7 dependent on the specific definitions of the various categories of tax adopted by national law. Depending on whether or not the concepts of income tax, wealth tax and death duties include, under national law, gift tax, the domicile for tax purposes of officials and other servants of the European Union for the purpose of levying gift tax would no longer depend on that provision of Protocol No 7 but on the choices made by the Member States.

39 Second, such an interpretation would introduce, when applying the first sentence of the first paragraph of Article 13 of Protocol No 7, uncertainty liable to give rise to conflicts of jurisdiction in tax matters, leaving open the question whether the concepts of income tax, wealth tax and death duties are to be understood according to the national law of the State of origin or that of the State of residence. As the Advocate General observed in point 32 of his Opinion, if the legal system of one of those two States defines gift tax as a type of income tax, while the legal system of the other State regards it as a tax that is wholly distinct from the categories referred to in the first sentence of the first paragraph of Article 13 of Protocol No 7, that provision would either apply or not apply, depending on the national law to which reference is made.

40 It follows from the foregoing that the concepts of income tax, wealth tax and death duties, within the meaning of the first sentence of the first paragraph of Article 13 of Protocol No 7, constitute autonomous concepts of EU law that must be interpreted uniformly, irrespective of characterisation in the Member States (see, by analogy, judgment of 20 January 2021, *Finanzamt Saarbrücken*, C-288/19, EU:C:2021:32, paragraph 39).

41 It is true that, as has already been pointed out in paragraph 34 above, the wording of the first sentence of the first paragraph of Article 13 of Protocol No 7 does not contain any definition of those concepts. It is nevertheless apparent from the scheme of that provision, as has also been observed by the Advocate General, in essence, in points 44 and 45 of his Opinion, that a gift tax shares some essential features with both death duties and income tax, expressly referred to in that wording, inasmuch as gift tax is imposed on the gratuitous transfer of assets or on the enrichment resulting from such a transfer. In view of those shared features, gifts are covered, in most of the legal systems of the Member States, either by death duties or by income tax.

42 As regards, in the second place, the context in which that provision occurs and the objectives pursued by Protocol No 7, it is clear, first, from Article 343 TFEU, recalled in the single recital of that protocol, that that protocol confers on the European Union ‘such privileges and immunities as are necessary for the performance of its tasks’.

43 It follows that the privileges, immunities and facilities enjoyed by officials and other servants of the European Union must be interpreted in the sense most favourable to the performance by the European Union of its tasks.

44 In that regard, it is in the interest of the European Union, in order to make it attractive for officials and other servants to enter the service, that clear rules make it possible to overcome the administrative difficulties inherent in the mobility between Member States which recruitment by an EU institution most often involves. From that point of view, the maintenance of the pre-existing domicile for tax purposes, pursuant to the first sentence of the first paragraph of Article 13 of Protocol No 7, spares officials and other servants of the European Union the uncertainties and steps that a move of their domicile for tax purposes to another Member State would entail in the absence of that rule.

45 Excluding gift tax from the scope of the first sentence of the first paragraph of Article 13 of Protocol No 7 would lead to officials and other servants of the European Union who have left their State of origin in order to enter the service of the European Union having two domiciles for tax purposes: the first in that State, in the application of income tax, wealth tax and death duties, and the second in the Member State in which the official or other servant of the European Union is actually resident, for the sole purpose of applying gift tax.

46 Moreover, the determination of that second domicile for tax purposes could prove to be more complex. Under the first sentence of the first paragraph of Article 13 of Protocol No 7, the maintenance of the domicile for tax purposes of the official or other servant of the European Union in his or her State of origin is relevant not only in the application of the taxes referred to in that article, but also 'in the application of conventions on the avoidance of double taxation concluded between Member States of the Union'. Consequently, if a bilateral tax convention between the State of origin and the State of residence were to be interpreted as being applicable to the taxation of gifts, the question arises as to whether the domicile for tax purposes, in respect of the application of gift tax, is determined by the first sentence of the first paragraph of Article 13 of Protocol No 7 and therefore remains that of the State of origin.

47 An interpretation of the first sentence of the first paragraph of Article 13 of Protocol No 7 that is so complex and uncertain in its outcome, and that is not, moreover, supported by the scheme of that provision, would run counter to the objective pursued, in the interests of the European Union, by that provision, which is to allow the tax situation of officials and other servants of the European Union to be determined in a simple and predicable manner with respect to the taxes to which the provision applies, in order to promote the attractiveness of the institutions, bodies, offices and agencies of the European Union.

48 Second, it is clear from Article 17 of Protocol No 7 that 'privileges, immunities and facilities shall be accorded to officials and other servants of the Union solely in the interests of the Union'.

49 It follows from that article that the privileges, immunities and facilities provided for by that protocol, since they are accorded neither in the interests of the officials and other servants of the European Union nor in the interests of the Member States, should be interpreted as being neutral in relation to the interests of both.

50 Consequently, the rule set out in the first sentence of the first paragraph of Article 13 of Protocol No 7 does not grant a fiscal advantage, as the Advocate General observed, in essence, in points 40 and 41 of his Opinion, either to the officials and other servants of the European Union or to the Member States in which they establish themselves in order to be able to perform their duties, since, in the application of the taxes referred to in that provision, those officials and other servants are to maintain their domicile for tax purposes in their State of origin. Conversely, that provision ensures that the State of origin is not unduly deprived of its power to tax persons who would otherwise have maintained their tax residence in that State.

51 By contrast, an interpretation of the first sentence of the first paragraph of Article 13 of Protocol No 7 to the effect that gift tax is excluded from the categories of tax in respect of which that article provides that domicile for tax purposes is to be maintained in the State of origin would run counter to the objective of neutrality referred to in paragraph 49 above.

52 First, the transfer of domicile for tax purposes for the purpose of levying gift tax in the State of residence would be fiscally advantageous for some officials and other servants of the European Union and disadvantageous for others, depending on the gift tax regime applicable in the State of origin and in the State of residence, respectively. Second, that transfer would confer a fiscal advantage on the Member States in which the EU institutions have their seat and where, therefore, the places of employment of officials and other servants of the European Union are generally situated, and would put the other Member States at a disadvantage.

53 Third, the effectiveness of the first sentence of the first paragraph of Article 13 of Protocol No 7 would be partially undermined if that provision were to be interpreted as not applying to gift tax. According to such an interpretation, officials and other servants of the European Union who transferred their residence to another Member State at the date of their recruitment in order to perform their duties would have domiciles for tax purposes in different Member States in the application of death duties and in the application of gift tax, and would thus be subject to different national tax regimes in respect of those two taxes.

54 In those circumstances, there would be a risk of death duties being circumvented by means of a gift, should the duties applicable to that gift in the State of residence be more advantageous than the death

duties applicable in the State of origin.

55 That possibility would undermine the effectiveness of the first sentence of the first paragraph of Article 13 of Protocol No 7 inasmuch as that provision maintains domicile for tax purposes in the State of origin for the purpose of levying death duties.

56 As the Advocate General observed, in essence, in point 45 of his Opinion, interpreting the first sentence of the first paragraph of Article 13 of Protocol No 7 as maintaining the domicile for tax purposes of officials and other servants of the European Union also in respect of the levying of gift tax in the State of origin allows, on the contrary, both gifts and inheritances received by those officials and other servants to be subject to a coherent tax regime, taking into account the similarities between those two types of transfer, as is generally the case in the tax law of the Member States.

57 In the light of the foregoing considerations, the answer to the first question is that the first sentence of the first paragraph of Article 13 of Protocol No 7 must be interpreted as applying to a tax on gifts.

The second question

58 Should the first question be answered in the affirmative, the referring court asks, by its second question, whether the first sentence of the first paragraph of Article 13 of Protocol No 7 precludes 'an official or other servant of the [European] Union who establishes his or her residence in the territory of a Member State other than his or her Member State of origin solely by reason of the performance of his or her duties in the service of the [European] Union from establishing an additional domicile for tax purposes in a Member State other than the State in which he or she performs his or her duties if, at the same time, he or she retains [a de facto residence] in the State in which he or she performs his or her duties'.

59 According to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it (judgment of 16 July 2026, *AEDT and État du Grand-Duché de Luxembourg*, C-158/25, EU:C:2026:591, paragraph 21 and the case-law cited).

60 In that regard, it must be noted that the referring court points to a possibility, in its second question, that an official or other servant of the European Union coming within the scope of the first sentence of the first paragraph of Article 13 of Protocol No 7 may have, in addition to his or her domicile for tax purposes in the State of origin, an 'additional domicile for tax purposes' in a Member State other than that in which that person performs his or her duties.

61 However, as is clear from the wording of the first sentence of the first paragraph of Article 13 of Protocol No 7, which uses the term domicile for tax purposes in the singular, officials and other servants of the European Union who, by reason of the performance of their duties, leave their State of origin in order to establish their residence in the territory of another Member State are deemed to maintain only one domicile for tax purposes, situated in their State of origin. That reading is supported by the objective of that provision, recalled in paragraph 47 above, which is to make it possible to determine in a simple and predictable manner the tax situation of officials and other servants of the European Union in respect of the taxes to which it applies.

62 It follows that, in accordance with the first sentence of the first paragraph of Article 13 of Protocol No 7, it cannot be considered that A has, in addition to his domicile for tax purposes in his State of origin, an additional domicile for tax purposes in the State of residence, in the present case Germany.

63 Furthermore, the referring court notes that, under the first sentence of the first paragraph of Article 13 of Protocol No 7, the application of that provision to an official or other servant of the European Union is subject to the condition that that person has established his or her residence in the territory of a Member State other than his or her State of origin 'solely by reason of the performance of [his or her duties] in the

service of the Union'. In the present case, the referring court is uncertain whether that condition is satisfied, since A, a member of staff of the EIB assigned to the seat of that body, situated in Luxembourg, moved his residence to Germany for personal reasons, even though he has maintained a dwelling which he uses in Luxembourg, where he thus has a de facto domicile.

64 In the light of the foregoing observations, it is necessary to reformulate the second question, in order to provide an answer that is of use to the referring court.

65 By that question, the referring court asks, in essence, whether the first sentence of the first paragraph of Article 13 of Protocol No 7 must be interpreted as meaning that an official or other servant of the European Union who, in order to perform his or her duties, established his or her residence in the territory of a Member State other than his or her State of origin but who subsequently moved, for personal reasons, his or her residence to a Member State other than that in which he or she performs his or her duties, maintains his or her domicile for tax purposes in his or her State of origin.

66 In the first place, it must be noted that a clear and unequivocal answer to the second question cannot be inferred from the wording of the first sentence of the first paragraph of Article 13 of Protocol No 7 alone. Although that provision expressly provides that the establishment in a Member State other than the State of origin must have as its sole reason the performance of duties in the service of the European Union, its wording may be interpreted in two different ways.

67 According to the first of those interpretations, the first sentence of the first paragraph of Article 13 of Protocol No 7 could be read as applying to officials and other servants of the European Union on the condition that they establish their place of residence solely in the Member State in which they perform their duties. The reference to the establishment of the residence of the official or other servant in a Member State other than that person's State of origin 'solely by reason of the performance of [his or her] duties in the service of the Union' would require such a reading. That reason for establishing residence could be subject to a qualification, which the Advocate General proposed in points 77 and 78 of his Opinion, according to which the establishment of residence in another Member State should be linked not solely but in a determining manner to the performance of duties in the service of the European Union. Thus interpreted, the first sentence of the first paragraph of Article 13 of Protocol No 7 would not be applicable where the official or other servant establishes, for personal reasons, his or her residence in the territory of a Member State other than that in which that person performs his or her duties.

68 According to the second of those interpretations, the reason for the establishment in a Member State other than the State of origin, referred to in the first sentence of the first paragraph of Article 13 of Protocol No 7, relates only to the decision of the official or other servant to move his or her residence to a Member State other than his or her State of origin, in order to be able to perform his or her duties in the service of the European Union, without it being necessary, on such a reading, for the State of residence necessarily to be the State in which that person performs his or her duties. Interpreted in that manner, that provision does not, in itself, preclude the person concerned from maintaining his or her domicile for tax purposes in his or her State of origin, even though that person has established himself or herself, for personal reasons, in a Member State other than the Member State in which he or she performs his or her duties.

69 In so far as the wording of the first sentence of the first paragraph of Article 13 of Protocol No 7 alone does not provide any guidance in favour of either of the abovementioned interpretations, it is necessary to examine, in the second place, the context in which that provision occurs.

70 In that regard, it is clear, first, from Article 17 of Protocol No 7 that the rules of that protocol are laid down solely in the interest of the European Union. Second, Articles 12 and 13 of Protocol No 7 establish a division of taxation powers between the European Union, the State where the official had his or her domicile for tax purposes before entering the service of the European Union, and the State in which that official established himself or herself by reason of the performance of his or her duties in the service of the European Union. The Court inferred from those provisions that Article 13 of Protocol No 7 had to be interpreted as meaning that the domicile for tax purposes of the official or other servant of the European

Union cannot depend on the volition of the person concerned (see, to that effect, judgment of 17 June 1993, *X*, C-88/92, EU:C:1993:246, paragraphs 10, 11 and 13).

71 However, that would be the case if the official or other servant could, for personal reasons, move his or her residence to a Member State other than the State in which he or she performs his or her duties in the service of the European Union and establish his or her domicile for tax purposes there, thereby choosing a different domicile for tax purposes from that of his or her State of origin, even though those duties have not ended.

72 Consequently, the context in which the first sentence of the first paragraph of Article 13 of Protocol No 7 occurs, as interpreted by the Court, permits the inference that the reason for establishing residence in a Member State other than the State of origin, as referred to in that provision, must not be interpreted as having the consequence that an official or other servant, as long as he or she is in the service of the European Union, would escape the application of that provision by moving his or her residence to a Member State other than the Member State in which he or she performs his or her duties.

73 In the third place, that interpretation is supported by the objective of the first sentence of the first paragraph of Article 13 of Protocol No 7, recalled in paragraph 47 above, which is to make it possible to determine in a simple and predictable manner the tax situation of officials and other servants of the European Union in respect of the taxes to which the provision applies, in the interests of the attractiveness of the institutions, bodies, offices and agencies of the European Union.

74 It would run counter to that objective if the reason for establishing residence in a Member State other than the State of origin, namely the performance of duties in the service of the European Union, referred to in the first sentence of the first paragraph of Article 13 of Protocol No 7, were to be interpreted as excluding from the scope of that provision officials and other servants of the European Union who have established their residence in a Member State other than that in which they perform their duties.

75 The choice of residence is generally the result of multiple considerations, which are not only professional but also economic, personal and family considerations, and which reflect a set of preferences and constraints.

76 While officials or other servants, when leaving their State of origin in order to enter the service of the European Union, most often reside in the Member State in which they perform their duties, they might also be compelled or might choose to establish or move the centre of their family interests to a Member State other than that in which they perform their duties.

77 Even assuming that the wording of the first sentence of the first paragraph of Article 13 of Protocol No 7 allowed the qualification referred to in paragraph 67 above, with the result that the performance of duties in the service of the European Union would be only the determining, and not the sole, criterion for the choice of residence, such an interpretation would make the application of that provision uncertain, by making it dependent on the assessment of the subjective motives which led the officials and other servants of the European Union to make that choice.

78 By contrast, the interpretation of the first sentence of the first paragraph of Article 13 of Protocol No 7 according to which that provision is applicable to officials and other servants of the European Union who move their residence to a Member State other than their State of origin solely by reason of the performance of their duties in the service of the European Union, including where they reside in a Member State other than the Member State in which they perform their duties, with the consequence that those officials and other servants of the European Union maintain their domicile for tax purposes in their State of origin, makes it possible to determine in a clear and predictable manner the domicile for tax purposes of officials and other servants of the European Union, without giving rise to any difficulties in application.

79 According to that interpretation, the officials and other servants of the European Union maintain their domicile for tax purposes in their State of origin, irrespective of their potential choice to establish their

residence in, or subsequently to move it to, a Member State other than that in which they perform their duties. Such a choice does not therefore alter the domicile for tax purposes as determined by applying the first sentence of the first paragraph of Article 13 of Protocol No 7.

80 It must be borne in mind, however, that the choice of residence by officials and other servants of the European Union is circumscribed, in particular, by Article 20 of the Staff Regulations of Officials of the European Union, which requires an official of the European Union to 'reside either in the place where he is employed or at no greater distance there from as is compatible with the proper performance of his duties'. Similarly, the Staff Regulations of the EIB, adopted on 20 April 1960 by the EIB Board of Directors, in the version applicable to A, provide, in Article 10 thereof, that, 'save with special permission, members of staff shall be required to reside at or near their place of employment'.

81 In the light of the foregoing considerations, the answer to the second question is that the first sentence of the first paragraph of Article 13 of Protocol No 7 must be interpreted as meaning that an official or other servant of the European Union who, in order to perform his or her duties, established his or her residence in the territory of a Member State other than his or her State of origin but who subsequently moved, for personal reasons, his or her residence to a Member State other than that in which he or she performs his or her duties, maintains his or her domicile for tax purposes in his or her State of origin.

Costs

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

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

1. **The first sentence of the first paragraph of Article 13 of Protocol (No 7) on the privileges and immunities of the European Union must be interpreted as applying to a tax on gifts.**

2. **The first sentence of the first paragraph of Article 13 of Protocol (No 7) on the privileges and immunities of the European Union must be interpreted as meaning that an official or other servant of the European Union who, in order to perform his or her duties, established his or her residence in the territory of a Member State other than his or her State of origin but who subsequently moved, for personal reasons, his or her residence to a Member State other than that in which he or she performs his or her duties, maintains his or her domicile for tax purposes in his or her State of origin.**

[Signatures]

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* Language of the case: German.

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i The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.