

Questions referred

1. Does Article 2 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ⁽¹⁾ ('the Directive') preclude the maintenance in being of the new legal position created by an administrative decision that has become final under national law, in the area of law governing disciplinary action in the civil service (disciplinary decision), compulsorily retiring and reducing the pension benefits of a civil servant, where

that administrative decision was not yet subject to provisions of EU law, in particular the Directive, at the time when it was adopted, but

a (notional) decision to the same effect would infringe the Directive if it were adopted within the temporal scope of the Directive?

2. If the first question is answered in the affirmative, is it, for the purposes of creating a non-discriminatory situation,
- (a) necessary under EU law, for the purposes of determining the civil servant's pension, to treat him as if, in the period between the entry into force of the administrative decision and his reaching statutory pensionable age, he had not been retired but working, or is it
 - (b) sufficient for these purposes to recognise as due the unreduced pension accruing in consequence of compulsory retirement at the time specified in the administrative decision?
3. Does the answer to Question 2 depend on whether the civil servant did in fact proactively seek active employment in the federal civil service before reaching retirement age?
4. If it is considered sufficient to annul the percentage reduction of pension entitlement (and depending also, if necessary, on the circumstances referred to in Question 3):

Can the principle of non-discrimination contained in the Directive support a primacy of application over conflicting national law which a national court must observe, when calculating pension entitlement, even in respect of periods before the Directive became directly applicable in national law?

5. If Question 4 is answered in the affirmative, to which point in time does such 'retroactive effect' extend?

⁽¹⁾ OJ 2000 L 303, p. 16.

Request for a preliminary ruling from the Finanzgericht Münster (Germany) lodged on 17 May 2017 — Harry Mensing v Finanzamt Hamm

(Case C-264/17)

(2017/C 283/24)

Language of the case: German

Referring court

Finanzgericht Münster

Parties to the main proceedings

Applicant: Harry Mensing

Defendant: Finanzamt Hamm

Questions referred

1. Is Article 316(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽¹⁾ to be interpreted as meaning that taxable dealers may apply the margin scheme also to the supply of works of art supplied to the taxable dealer within the Community by their creators or their successors in title where such creators or successors in title are not persons referred to in Article 314 of Directive 2006/112?

2. If the answer to Question 1 is in the affirmative: does Article 322(b) of Directive 2006/112 require that the dealer be denied the right to deduct input tax paid on the intra-Community acquisition of works of art, even if there is no equivalent provision under national law?

⁽¹⁾ OJ 2006 L 347, p. 1.

**Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on
17 May 2017 — Rhein-Sieg-Kreis v Verkehrsbetrieb Hüttebräucker GmbH, BVR Busverkehr
Rheinland GmbH**

(Case C-266/17)

(2017/C 283/25)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Appellant: Rhein-Sieg-Kreis

Respondents: Verkehrsbetrieb Hüttebräucker GmbH, BVR Busverkehr Rheinland GmbH

Questions referred

1. Does Article 5(2) of Regulation (EC) No 1370/2007 ⁽¹⁾ apply to contracts which are not contracts which, within the meaning of the first sentence of Article 5(1) of Regulation (EC) No 1370/2007, take the form of service concession contracts as defined in Directives 2004/17/EC ⁽²⁾ or 2004/18/EC? ⁽³⁾

If Question 1 is answered in the affirmative:

2. Where an individual competent authority awards a public service contract directly to an internal operator in accordance with Article 5(2) of Regulation (EC) No 1370/2007, is the joint exercise of control by that authority together with the other shareholders of the internal operator precluded if the power to intervene in public passenger transport in a given geographical area (Article 2(b) and (c) of Regulation (EC) No 1370/2007) is divided between the individual competent authority and a group of authorities which provides integrated public passenger transport services, for example where the power to award public service contracts to an internal operator remains with the individual competent authority but the responsibility for tariffs is transferred to a special purpose transport association to which, in addition to the individual authority, further authorities competent in their geographical areas belong?
3. Where an individual competent authority awards a public service contract directly to an internal operator in accordance with Article 5(2) of Regulation (EC) No 1370/2007, is the joint exercise of control by that authority together with the other shareholders of the internal operator precluded if, according to that operator's articles of association, in the case of resolutions concerning the conclusion, amendment or termination of a public service contract referred to in Article 5(2) of Regulation (EC) No 1370/2007, the only shareholder entitled to vote is the one which itself or whose indirect or direct owner awards a public service contract to the internal operator in accordance with Article 5(2) of Regulation (EC) No 1370/2007?
4. Does Article 5(2)(b) of Regulation (EC) No 1370/2007 permit the internal operator also to perform public passenger transport services for other competent local authorities within their territory (including through routes or other part services which enter the territory of neighbouring competent local authorities) if these are not awarded through organised competitive tender procedures?
5. Does Article 5(2)(b) of Regulation (EC) No 1370/2007 permit the internal operator also to perform public passenger transport activity outside the territory of the commissioning authority for other authorities on the basis of public service contracts covered by the transitional provisions of Article 8(3) of Regulation (EC) No 1370/2007?