

**Parties to the main proceedings**

*Applicant:* Magdalena Molina Rodríguez

*Defendant:* Servicio Público de Empleo Estatal (SEPE)

**Question referred**

Must the prohibition of indirect discrimination on grounds of sex laid down in Article 4(1) of Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security <sup>(1)</sup> be interpreted as precluding a provision of national law, such as Article 215(1)(3) of the Ley General de la Seguridad Social (General Law on Social Security) (approved by [Real Decreto Legislativo] 1/94 (Royal Legislative Decree 1/94)), which, as amended by Real Decreto Ley 5/2013 de 15 de marzo (Royal Decree-Law 5/2013 of 15 March), lays down a new condition — that household income may not exceed a certain amount — for entitlement to the non-contributory unemployment benefit for workers aged 55 and over, when this restricts entitlement to that benefit significantly more for female (as compared with male) potential beneficiaries, as is demonstrated by the statistics provided?

<sup>(1)</sup> OJ 1979 L 6, p. 24.

---

**Appeal brought on 24 April 2018 by Repower AG against the judgment of the General Court (Fifth Chamber) delivered on 21 February 2018 in Case T-727/16, *Repower v EUIPO***

**(Case C-281/18 P)**

(2018/C 259/34)

*Language of the case: French*

**Parties**

*Appellant:* Repower AG (represented by: R. Kunz-Hallstein, H.P. Kunz-Hallstein and V. Kling, Rechtsanwälte)

*Other parties to the proceedings:* European Union Intellectual Property Office, repowermap.org

**Form of order sought**

The appellant claims that the Court should:

- set aside the first paragraph of the operative part of the General Court's judgment of 21 February 2018 in Case T-727/16, in so far as the action was dismissed;
- annul the decision of the Fifth Board of Appeal of EUIPO of 3 August 2016 (Case R 2311/2014-5 (REV));
- order EUIPO to pay the costs.

**Pleas in law and main arguments**

1. EUIPO was not authorised to substitute the reasoning for the revocation in the proceedings before the General Court. EUIPO altered the subject matter of the dispute and infringed the right to be heard and the obligation to exercise its discretion.
2. The general principle of law authorising the withdrawal of an unlawful administrative measure did not apply in the present case. There is no legal gap in the legislation. The provisions of Articles 80 and 83 of Regulation No 207/2009 constitute a *lex specialis*.
3. Under Article 83 of Regulation No 207/2009, the onus was not on the appellant to prove that a principle of withdrawal of unlawful administrative measures does not exist in the Member States.

4. Even assuming that such a general principle applies in the field of trade mark law, the conditions for revocation in full were not fulfilled by reason of the protection of legitimate expectations.
5. There is a failure to state proper reasons in the Board of Appeal's decision.

---

**Request for a preliminary ruling from the Audiencia Provincial de Almería (Spain) lodged on 25 April 2018 — Liliana Beatriz Moya Privitello, Sergio Daniel Martín Durán v Cajas Rurales Unidas, Sociedad Cooperativa de Crédito**

**(Case C-283/18)**

(2018/C 259/35)

*Language of the case: Spanish*

**Referring court**

Audiencia Provincial de Almería

**Parties to the main proceedings**

*Appellants:* Liliana Beatriz Moya Privitello, Sergio Daniel Martín Durán

*Respondents:* Cajas Rurales Unidas, Sociedad Cooperativa de Crédito

**Questions referred**

1. Does the use in contracts for long-term mortgage loans at a variable interest rate of one of the reference indices existing on the market, which has been officially published by the Banco de España (Bank of Spain), preclude the examination of the use of that index from the perspective of transparency, including where an index expressly permitted under the specific legislation has been used, if that legislation allows the parties to choose the index and that Bank used one of those indices without informing the customer of the existence of other applicable indices which are more favourable to consumers?
2. In so far as that legislation permits the applicable reference index to be chosen from those provided for, can national legislation like that applicable in the main proceedings (namely, *inter alia* and primarily, the Orden de 5 de mayo de 1994 sobre transparencia de las condiciones financieras de los préstamos hipotecarios (Order of 5 May 1994 on transparency of the financial terms of mortgage loans), Orden EHA/2899/2011, de 28 de octubre, de transparencia y protección del cliente de servicios bancarios (Order EHA/2899/2011 of 28 October on transparency and the protection of banking services customers), Circular 5/2012, de 27 de junio, del Banco de España, a entidades de crédito y proveedores de servicios de pago, sobre transparencia de los servicios bancarios y responsabilidad en la concesión de préstamos (Bank of Spain Notice 5/2012 of 27 June to credit institutions and payment services providers on the transparency of banking services and responsible lending, implementing [Ley] 10/2014, de 26 de junio, de ordenación, supervisión y solvencia de entidades de crédito (Law 10/2014 of 26 June on the organisation, supervision and solvency of credit institutions) or its predecessor, Article 48 of Ley 26/1988, de 29 de julio, sobre Disciplina e Intervención de las Entidades de Crédito (Law 26/1988 of 29 July on supervision and control of credit institutions)) be regarded as 'mandatory statutory or regulatory provisions' for the purpose of contracts for long-term mortgage loans at a variable interest rate, within the meaning of Article 1(2) of Directive 93/13/EEC? <sup>(1)</sup>

---

<sup>(1)</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).