

4. If a Member State adopts a private copying 'levy' system, is the indiscriminate application of that 'levy' to undertakings and professional persons who clearly purchase digital reproduction devices and media for purposes other than private copying compatible with the concept of 'fair compensation'?
5. Might the system adopted by the Spanish State of applying the private copying levy indiscriminately to all digital reproduction equipment, devices and media infringe Directive 2001/29, in so far as there is insufficient correlation between the fair compensation and the limitation of the private copying right justifying it, because to a large extent it is applied to different situations in which the limitation of rights justifying the compensation does not exist?

(¹) Corrigendum to Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167 of 22.6.2001).

Reference for a preliminary ruling from the Helsingin käräjäoikeus (Finland) lodged on 4 November 2008 — Sanna Maria Parviainen v Finnair Oyj

(Case C-471/08)

(2009/C 19/22)

Language of the case: Finnish

Referring court

Helsingin käräjäoikeus

Parties to the main proceedings

Applicant: Sanna Maria Parviainen

Defendant: Finnair Oyj

Question referred

Is Article 11(1) of the Protection of Pregnant Workers Directive (¹) to be interpreted as meaning that a worker who is transferred to other lower-paid work because of her pregnancy must, on the basis of that provision, be paid as much as she received on average before the transfer, and is it relevant in that respect

what kind of allowances and on what basis the worker was paid in addition to her basic monthly pay?

(¹) Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) OJ L 348, 1992, p. 1.

Appeal brought on 6 November 2008 by Evropaïki Dynamiki — Proigmena Systemata Tilepikoinonion Pliroforikis kai Tilematikis AE against the judgment of the Court of First Instance (Third Chamber) delivered on 10 September 2008 in Case T-59/05 Evropaïki Dynamiki — Proigmena Systemata Tilepikoinonion Pliroforikis kai Tilematikis AE v Commission of the European Communities

(Case C-476/08 P)

(2009/C 19/23)

Language of the case: English

Parties

Appellant: Evropaïki Dynamiki — Proigmena Systemata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: N. Korogiannakis, P. Katsimani, Δικηγόροι)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The appellant claim that the Court should:

- Set aside the decision of the Court of First Instance;
- annul the decision of the Commission (DG Agriculture) to evaluate the applicant's bid as not successful and award the contract to the successful contractor;
- order the Commission to pay the applicant's legal and other costs and expenses incurred in connection with the initial procedure, even if the current Appeal is rejected as well as those of the current Appeal, in case it is accepted

Pleas in law and main arguments

The appellant bases its appeal against the judgment T-59/05 of the Court of First Instance on the following grounds:

It is submitted that the Court of First Instance committed a breach of procedure by refusing to recognise an evident discrepancy between the award criteria as set out in section 5.2 of the EvCo Report and those mentioned in section 5.4 of the same Report and by misinterpreting the relevant procedural rules on the burden of proof. More specifically, the Court of First Instance does not refer to any evidence in support of its qualification as 'typographical error' of an obvious discrepancy, and no such evidence can by any means be deduced from the content of the Evaluation Report itself.

Further, the judgment fails to observe the consequences of the Commission's infringement of its duty of diligence and of the principle of good administration. Since the Court of First Instance, despite observing that the Commission infringed the rule of law, did not proceed into annulling the Commission's Decision on this ground, the Court of First Instance undoubtedly failed in applying the relevant provisions.

It is submitted that the Court of First Instance also failed to apply the relevant provisions on the duty of the contracting authority to provide reasons, which would lead it to annul the award decision; only scores and some general comments from the Evaluation Report have been submitted to the Appellant by the letter of 10 December 2004. In this sense the Court of First Instance distorted the evidence adduced before it, and for this reason its judgment should be annulled.

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale della Sicilia (Italy) lodged on 6 November 2008 — Buzzi Unichem SpA and Others v Ministero dello Sviluppo Economico and Others

(Case C-478/08)

(2009/C 19/24)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale della Sicilia

Parties to the main proceedings

Applicants: Buzzi Unichem SpA and Others

Defendants: Ministero dello Sviluppo Economico and Others

Questions referred

1. May the 'polluter pays' principle laid down in Article 174(2) EC be interpreted as meaning that, even if only by way of exception, the obligations regarding emergency safety measures, decontamination and environmental reinstatement of a contaminated site (and/or the costs relating thereto) may

be imposed on a person having no connection with the release into the environment of the substances which led to the ecological impairment of that site, or, in the event of a negative answer, does that principle preclude national legislation and/or an administrative approach which imposes obligations regarding emergency safety measures, decontamination and environmental reinstatement of a contaminated site (and/or the costs relating thereto) upon a person who claims to have no connection with the release into the environment of the substances which led to the ecological impairment of that site, without any prior ascertainment of any individual responsibility by virtue of a causal link, or merely because that person happens to operate in or has property rights in a contaminated area, in breach or disregard of the principle of proportionality?

2. Does the 'polluter pays' principle preclude national legislation, and in particular Article 2050 of the [Italian] Civil Code, which allows the Public Authority, where a number of industrial operators operate within the contaminated site, to impose on them the burdens of the decontamination of that site, without prior ascertainment on an individual basis of their respective responsibility for the pollution, or in any event merely because they are deemed accountable by virtue of their ownership of the means of production and are therefore subject to strict liability for the damage they cause to the environment or may they in any event be required to reinstate the area around the widespread pollution identified there even where no material causation has been established for the pollution and there is no proportional basis for it?
3. Does the Community directive on compensation for environmental damage (Directive 2004/35/EC⁽¹⁾ of 21 April 2004 and in particular Article 7 thereof and Annex II thereto, to which that article refers) preclude national legislation which allows the Public Administration to require, 'as reasonable options for remedying environmental damage', that action be taken concerning environmental matrices (comprising in this case the 'physical confines' of the groundwater along the entire sea front) which are different from and go further than those chosen on completion of an appropriate investigation carried out on a consultative basis, which have already been approved and put into effect and are being implemented, without in any event having assessed the site-specific conditions, the costs of implementation in relation to the reasonably foreseeable benefits, the possible or probable collateral damage and adverse effects on public health and safety, and the necessary time scales for implementation?
4. Given the specificity of the situation prevailing in the Priolo Site of National Interest, does the Community directive on compensation for environmental damage (Directive 2004/35/CE of 21 April 2004 and in particular Article 7 and Annex II thereto, to which that article refers) preclude national legislation which allows the Public Administration to impose such requirements as conditions for an authorisation for the lawful use of the areas not directly affected by the decontamination in so far as they have already been decontaminated or were not in any event polluted, included within the limits of the Priolo Site of National Interest?

⁽¹⁾ OJ L 143, p. 56.