

Such national legislation constitutes a restriction of the freedom of establishment within the meaning of Article 49 TFEU, but is suitable for attaining the objective of protecting the recipients of the services in question. It is for the referring court to determine whether, in the light of, *inter alia*, the method of calculating the minimum tariffs, particularly in the light of the number of categories of work for which the certificate is drawn up, that national legislation goes beyond what is necessary to attain that objective.

<sup>(1)</sup> OJ C 295, 29.9.2012.

**Judgment of the Court (Third Chamber) of 12 December 2013 (request for a preliminary ruling from the Tribunale di Napoli — Italy) — Carmela Carratù v Poste Italiane SpA**

(Case C-361/12) <sup>(1)</sup>

**(Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work — Principle of non-discrimination — Employment conditions — National legislation establishing a system of compensation for the unlawful insertion of a fixed-term clause into an employment contract which is different from that applicable to the unlawful termination of an employment contract of indefinite duration)**

(2014/C 52/25)

*Language of the case: Italian*

**Referring court**

Tribunale di Napoli

**Parties to the main proceedings**

*Applicant:* Carmela Carratù

*Defendant:* Poste Italiane SpA

**Re:**

Request for a preliminary ruling — Tribunale di Napoli — Interpretation of Clause 4 of the framework agreement set out in Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p 43) — Scope — Concept of ‘working conditions’ — Horizontal applicability of that directive — Concept of ‘State body’ — Interpretation of Article 47 of the Charter of Fundamental Rights and Article 6 ECHR — Principle of equivalence — National legislation establishing a system of compensation for the unlawful insertion of a fixed-term clause into an employment contract providing for comprehensive compensation ranging from 2.5 to 12 months’ actual full pay for the period from the interruption of the employment relations until the date of actual reinstatement — Compensation lower than either the compensation provided for under the ordinary civil

law in the event of unjustified refusal to accept work or the compensation provided for in the event of unlawful termination of an employment contract of indefinite duration.

**Operative part of the judgment**

1. Clause 4(1) of the Framework agreement on fixed-term work, annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as meaning that it may be relied on directly against a State body such as Poste Italiane SpA.
2. Clause 4(1) of the framework agreement on fixed-term work must be interpreted as meaning that the concept of ‘employment conditions’ covers the compensation that the employer must pay to an employee on account of the unlawful insertion of a fixed-term clause into his employment contract.
3. While that framework agreement does not preclude Member States from granting fixed-term workers more favourable treatment than that provided for by the framework agreement, clause 4(1) of the framework agreement must be interpreted as not requiring the compensation paid in respect of the unlawful insertion of a fixed-term clause into an employment relationship to be treated in the same way as that paid in respect of the unlawful termination of a permanent employment relationship.

<sup>(1)</sup> OJ C 295, 29.9.2012.

**Judgment of the Court (Third Chamber) of 12 December 2013 (request for a preliminary ruling from the Supreme Court of the United Kingdom) — Test Claimants in the Franked Investment Income Group Litigation v Commissioners of Inland Revenue, Commissioners for Her Majesty’s Revenue and Customs**

(Case C-362/12) <sup>(1)</sup>

**(Judicial protection — Principle of effectiveness — Principles of legal certainty and the protection of legitimate expectations — Restitution of sums paid but not due — Remedies — National legislation — Curtailment of the limitation period for the applicable remedies without notice and retroactively)**

(2014/C 52/26)

*Language of the case: English*

**Referring court**

Supreme Court of the United Kingdom

**Parties to the main proceedings**

*Applicant:* Test Claimants in the Franked Investment Income Group Litigation

*Defendants:* Commissioners of Inland Revenue, Commissioners for Her Majesty’s Revenue and Customs

**Re:**

Reference for a preliminary ruling — Supreme Court of the United Kingdom — Interpretation of Articles 49 TFEU and 63 TFEU — National taxes contrary to European Union law — Recovery of sums unduly paid — Coexistence, under national law, of two alternative causes of action open to taxpayers for the purpose of seeking repayment of sums due, one of which provides for a longer period within which an action may be brought than the other — National legislation which reduces, retroactively and without prior notice, the longer of the two limitation periods — Whether compatible with the principles of effectiveness, legal certainty and legitimate expectations.

**Operative part of the judgment**

1. In a situation in which, under national law, taxpayers have a choice between two possible causes of action as regards the recovery of tax levied in breach of European Union law, one of which benefits from a longer limitation period, the principles of effectiveness, legal certainty and the protection of legitimate expectations preclude national legislation curtailing that limitation period without notice and retroactively;
2. It makes no difference to the answer to the first question that, at the time when the taxpayer issued its claim, the availability of the cause of action affording the longer limitation period had been recognised only recently by a lower court and was not definitively confirmed by the highest judicial authority until later.

<sup>(1)</sup> OJ C 311, 13.10.2012.

**Judgment of the Court (Eighth Chamber) of 12 December 2013 — European Commission v Italian Republic**

(Case C-411/12) <sup>(1)</sup>

*(Failure of a Member State to fulfil obligations — State aid — Preferential electricity tariff — Decision 2011/746/EU — Aid incompatible with the internal market — Recovery — Failure to implement within the prescribed period)*

(2014/C 52/27)

Language of the case: Italian

**Parties**

*Applicant:* European Commission (represented by: B. Stromsky, D. Grespan and S. Thomas, acting as Agents)

*Defendant:* Italian Republic (represented by: G. Palmieri, assisted by S. Fiorentino, acting as Agents)

**Re:**

Failure of a Member State to fulfil obligations — State aid — Failure to adopt the measures necessary to comply with Articles 3, 4 and 5 of Commission Decision 2011/746/EU of 23 February 2011 on State aid granted by Italy to Portovesme Srl, ILA SpA, Eurallumina SpA and Syndial SpA (OJ 2011 L 309, p. 1) — Obligation to recover without delay the aid declared unlawful and incompatible with the common market and to notify the Commission of the measures taken.

**Operative part of the judgment**

*The Court:*

1. Declares that, by not taking, within the prescribed period, all the measures necessary to recover from Portovesme Srl and Eurallumina SpA the State aid declared unlawful and incompatible with the internal market in Article 2 of Commission Decision 2011/746/EU of 23 February 2011 on State aid measures C 38/B/04 (ex NN 58/04) and C 13/06 (ex N 587/05) granted by Italy to Portovesme Srl, ILA SpA, Eurallumina SpA and Syndial SpA, the Italian Republic failed to fulfil its obligations under Articles 3 and 4 of that decision.
2. Orders the Italian Republic to pay the costs.

<sup>(1)</sup> OJ C 355, 17.11.2012.

**Judgment of the Court (Fifth Chamber) of 12 December 2013 (request for a preliminary ruling from the Tribunal Administrativo e Fiscal do Porto — Portugal) — Portgás — Sociedade de Produção e Distribuição de Gás SA v Ministério da Agricultura, do Mar, do Ambiente e do Ordenamento do Território**

(Case C-425/12) <sup>(1)</sup>

*(Procedures for awarding public contracts in the water, energy, transport and telecommunications sectors — Directive 93/38/EEC — Directive not transposed into national law — Whether the State may rely on that directive against a body holding a public service concession in the case where that directive has not been transposed into national law)*

(2014/C 52/28)

Language of the case: Portuguese

**Referring court**

Tribunal Administrativo e Fiscal do Porto

**Parties to the main proceedings**

*Applicant:* Portgás — Sociedade de Produção e Distribuição de Gás SA

*Defendant:* Ministério da Agricultura, do Mar, do Ambiente e do Ordenamento do Território

**Re:**

Request for a preliminary ruling — Tribunal Administrativo e Fiscal do Porto — Portugal — Interpretation of Articles 2(1)(b), 4(1) and 14(1)(c)(i) of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 199, p. 84), as amended by Directive 98/4/EC of the European Parliament and of the Council of 16 February 1998 (OJ 1998 L 101, p. 1) — Direct effect — Whether the State may rely on that directive against a body holding a public service concession in the case where that directive has not been transposed into national law.