



## Reports of Cases

### Case C-176/12

**Association de médiation sociale**  
v  
**Union locale des syndicats CGT and Others**

(Request for a preliminary ruling from the Cour de cassation (France))

(Social policy — Directive 2002/14/EC — Charter of Fundamental Rights of the European Union — Article 27 — Subjecting the setting up of bodies representing staff to certain thresholds of employees — Calculation of the thresholds — National legislation contrary to EU law — Role of the national court)

Summary — Judgment of the Court (Grand Chamber), 15 January 2014

- Social policy — Informing and consulting employees — Directive 2002/14 — Scope — Calculating the threshold of employees — National legislation excluding a specific category of workers from that calculation — Not permissible*  
*(European Parliament and Council Directive 2002/14, Art. 3(1))*
- Social policy — Informing and consulting employees — Directive 2002/14 — Article 3(1) — Direct effect — Not possible to rely upon a directive against an individual*  
*(European Parliament and Council Directive 2002/14, Art. 3(1))*
- Social policy — Informing and consulting employees — Directive 2002/14 — Article 3(1) — Obligations of the national court — Obligation to interpret national legislation in conformity with EU law — Limits — Observance of the general principles of law — Interpretation of the national law contra legem*  
*(European Parliament and Council Directive 2002/14, Art. 3(1))*
- Fundamental rights — Charter of Fundamental Rights of the European Union — Right of workers within an undertaking to be informed and consulted — Whether this can be invoked in a dispute between individuals in order to disapply a national provision not in conformity with Directive 2002/14 — Not possible — Potential obligation of the Member State concerned to provide compensation for the loss sustained by individuals on account of the non-conformity of the national law with EU law*  
*(Charter of Fundamental Rights of the European Union, Art. 27; European Parliament and Council Directive 2002/14, Art. 3(1))*

1. Article 3(1) of Directive 2002/14 establishing a general framework for informing and consulting employees in the European Community must be interpreted as precluding a national provision under which workers with assisted contracts are excluded from the calculation of staff numbers in the undertaking when determining the legal thresholds for setting up bodies representing staff.

Even if the encouragement of recruitment constitutes, admittedly, a legitimate aim of social policy and even if the Member States have, in choosing the measures capable of achieving the aims of their social policy, a broad margin of discretion, that margin of discretion nevertheless cannot have the effect of frustrating the implementation of a fundamental principle of EU law or of a provision of that law.

(see paras 26, 27, 29)

2. Article 3(1) of Directive 2002/14 establishing a general framework for informing and consulting employees in the European Community fulfils all of the conditions necessary to have direct effect. Although that directive grants the Member States a certain degree of discretion, in so far as it does not prescribe the manner in which the Member States are to take account of employees falling within its scope when calculating the thresholds of workers employed, that does not alter the precise and unconditional nature of the obligation in that article not to exclude from that calculation a specific category of persons initially included in the group to be taken into consideration.

However, even a clear, precise and unconditional provision of a directive seeking to confer rights or impose obligations on individuals cannot of itself apply in proceedings exclusively between private parties.

(see paras 33-36)

3. See the text of the decision.

(see paras 38-40)

4. Article 27 of the Charter of Fundamental Rights of the European Union, by itself or in conjunction with the provisions of Directive 2002/14, establishing a general framework for informing and consulting employees in the European Community must be interpreted to the effect that, where a national provision implementing that directive is incompatible with EU law, that article of the Charter cannot be invoked in a dispute between individuals in order to disapply that national provision contrary to EU law.

It is clear from the wording of Article 27 of the Charter that, for this article to be fully effective, it must be given more specific expression in EU or national law. In that regard, it is not possible to infer from the wording of Article 27 of the Charter or from the explanatory notes to that article that Article 3(1) of Directive 2002/14, as a directly applicable rule of law, lays down and addresses to the Member States a prohibition on excluding from the calculation of the staff numbers in an undertaking a specific category of employees initially included in the group of persons to be taken into account in that calculation. Accordingly, Article 27 of the Charter cannot, as such, be invoked in a dispute between individuals in order to conclude that the national provision which is not in conformity with Directive 2002/14 should not be applied. That finding cannot be called into question by considering Article 27 of the Charter in conjunction with the provisions of Directive 2002/14, given that, since that article by itself does not suffice to confer on individuals a right which they may invoke as such, it could not be otherwise if it is considered in conjunction with that directive.

However, a party injured as a result of national law not being in conformity with EU law can rely on the judgment of 19 November 1991 in Joined Cases C-6/90 and C-9/90 *Francovich and Others* in order to obtain, if appropriate, compensation for the loss sustained.

(see paras 45, 46, 48-50, operative part)