

**Action brought on 14 November 2014 — European Commission v Republic of Cyprus**

(Case C-515/14)

(2015/C 065/28)

*Language of the case: Greek***Parties**

*Applicant:* European Commission (represented by: E. Tserepa-Lacombe and D. Martin, acting as Agents)

*Defendant:* Republic of Cyprus

**Form of order sought**

- declare that the Republic of Cyprus has failed to fulfil its obligations under Articles 45 and 48 of the Treaty on the Functioning of the European Union and Article 4(3) of the Treaty on European Union because it has not repealed with retroactive effect, from 1 May 2004, the age criterion which is contained in Article 27 of the Law on Pensions (Law 97(I)97) and which renders that article incompatible with the foregoing provisions, since it deters workers from leaving their State in order to take up work in another Member State, an institution of the European Union or another international body and as it results in unequal treatment between migrant workers, including those who work in the institutions of the European Union or another international body, on the one hand, and State officials who have engaged in activity only in Cyprus, on the other;
  
- order the Republic of Cyprus to pay the costs.

**Pleas in law and main arguments**

The European Commission requests the Court to declare that the Republic of Cyprus has failed to fulfil its obligations under Articles 45 and 48 of the Treaty on the Functioning of the European Union and Article 4(3) of the Treaty on European Union because it has not repealed with retroactive effect, from 1 May 2004, the age criterion which is contained in Article 27 of Law 97(I)97 and which renders that article incompatible with the foregoing provisions, since it deters workers from leaving their State in order to take up work in another Member State, an institution of the European Union or another international body and as it results in unequal treatment between migrant workers, including those who work in the institutions of the European Union, and State officials who have engaged in activity only in Cyprus. The Cypriot legislation, and specifically Article 27 of the Law on Pensions (Law 97(I)97), introduces a difference in treatment between officials of the national administration and officials who work in another Member State in international bodies or in the European Union, since only workers who have engaged in activity exclusively in Cyprus can, in the event of release from the State service, make use of Articles 24 and 25 of the Law on Pensions and retain their pension rights even if they do not fulfil the age criterion of 45 or 48 years. On the other hand, workers who have exercised their right to freedom of movement do not have the possibility of relying on those articles, with the consequence of loss of their pension rights.

Furthermore, the article of the Law on Pensions that is at issue impedes the free movement of workers because it denies the worker the possibility of relying on aggregation of all insurance periods and does not guarantee the migrant worker a unified career for social security purposes. Application of the Law on Pensions means that an official who resigns voluntarily from the State service of Cyprus in order to work in another Member State in international bodies, and who does not fulfil the age criterion of having reached 45 or 48 years as the case may be, receives only the lump sum and loses the pension rights, pursuant to Article 27(1)(b) of the Law on Pensions, even if he has completed the minimum period of insurance of five years.

In addition, Law 31(I)/2012 which provides only for the possibility of transfer of pension rights to and from the pension scheme of officials of the European Union does not contain any provision relating to the pension rights of State officials who leave the State service of Cyprus in order to take up duties with the European Union but ultimately choose not to transfer their pension rights pursuant to Article 11 of Annex VIII to the Staff Regulations of Officials of the European Communities. Those officials will lose their pension rights if they have resigned voluntarily from the State service of Cyprus and do not fulfil the age criterion.

Moreover, the Law on the Pension Benefits of State Officials in the Broader Public Sector including Local Authorities (Provisions of General Application) of 2011 (Law 113(I)/2011) applies only to State officials who are new entrants appointed to a post for the first time on or after 1 October 2011, the date upon which that Law entered into force, with the result that the age discrimination continues to apply in respect of those who are governed by the Law on Pensions (Law 97 (I)97).

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**Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 19 November 2014 — Sparkasse Allgäu v Finanzamt Kempten**

(Case C-522/14)

(2015/C 065/29)

*Language of the case: German*

**Referring court**

Bundesfinanzhof

**Parties to the main proceedings**

*Applicant:* Sparkasse Allgäu

*Defendant:* Finanzamt Kempten

**Question referred**

Does the freedom of establishment (Article 49 of the Treaty on the Functioning of the European Union, ex Article 43 [of the Treaty establishing] the European Communities) preclude a provision in a Member State under which a credit institution established in its national territory must, on the death of a domestic testator, also notify the tax office responsible for the administration of inheritance tax in the national territory of those of the testator's assets which are held or managed in a dependent branch of the credit institution in another Member State, where there is no similar notification obligation in the other Member State and credit institutions in that State are subject to banking secrecy any breach of which constitutes a criminal offence?

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**Request for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 24 November 2014 — YARA Brunsbüttel GmbH v Hauptzollamt Itzehoe**

(Case C-529/14)

(2015/C 065/30)

*Language of the case: German*

**Referring court**

Finanzgericht Hamburg

**Parties to the main proceedings**

*Applicant:* YARA Brunsbüttel GmbH

*Defendant:* Hauptzollamt Itzehoe

**Questions referred**

1. Does Article 1 of Directive 2003/96/EC <sup>(1)</sup> preclude national tax relief for energy products used for thermal exhaust air treatment or does the directive not apply to such energy products pursuant to the second indent of Article 2(4)(b) of Directive 2003/96/EC because use for thermal exhaust air treatment is a purpose other than as motor fuels or as heating fuels and this therefore constitutes dual use of energy products within the meaning of that provision?