

3. Orders the Council of the European Union to pay the costs;
4. Orders the Federal Republic of Germany and the Kingdom of Sweden to bear their own costs.

⁽¹⁾ OJ C 96, 23.3.2015.
OJ C 146, 4.5.2015.

Judgment of the Court (Tenth Chamber) of 14 September 2016 (request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo No 4 de Madrid — Spain) — María Elena Pérez López v Servicio Madrileño de Salud (Comunidad de Madrid)

(Case C-16/15) ⁽¹⁾

(Reference for a preliminary ruling — Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clauses 3 to 5 — Successive fixed-term employment contracts within the public health service — Measures to prevent the abusive use of successive fixed-term employment relationships — Penalties — Reclassification of the employment relationship — Right to compensation)

(2016/C 419/14)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo No 4 de Madrid

Parties to the main proceedings

Applicant: María Elena Pérez López

Defendant: Servicio Madrileño de Salud (Comunidad de Madrid)

Operative part of the judgment

1. Clause 5(1)(a) of the framework agreement on fixed-term work, concluded on 18 March 1999, set out in the Annex 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 precluding the application of national legislation, such as that at issue in the main proceedings, by the authorities of the Member State concerned in such a way that:

- the renewal of successive fixed-term employment contracts in the public health sector is deemed to be justified by ‘objective grounds’, within the meaning of that clause, on the ground that those contracts are founded on legal provisions allowing them to be renewed in order to ensure the provision of certain services of a temporary, auxiliary or extraordinary nature when, in fact, those needs are fixed and permanent;
- there is no obligation on the competent authority to create additional permanent posts in order to bring an end to the employment of occasional regulated staff and it is permitted to fill the permanent posts created by hiring ‘temporary’ staff, so that the precarious situation of workers is perpetuated, where there is a structural deficit of regulated staff posts in that sector in the Member State concerned.

2. Clause 5 of the framework agreement on fixed-term work set out in the Annex to Directive 1999/70 must be interpreted as meaning that it does not preclude, in principle, national legislation which requires that the contractual relationship is to terminate on the date provided by the fixed-term contract and that all outstanding remuneration is to be paid, without prejudice to a possible reappointment, provided that that legislation does not compromise the objective and practical effect of that framework agreement, which is a matter to be determined by the referring court.

3. The Court of Justice of the European Union manifestly lacks jurisdiction to answer the fourth question referred for a preliminary ruling by the *Juzgado de lo Contencioso-Administrativo No 4 de Madrid* (Administrative Court No 4, Madrid, Spain).

⁽¹⁾ OJ C 96, 23.3.2015.

Judgment of the Court (Second Chamber) of 15 September 2016 (request for a preliminary ruling from the *College van Beroep voor het bedrijfsleven* — Netherlands) — *Koninklijke KPN NV and Others v Autoriteit Consument en Markt (ACM)*

(Case C-28/15) ⁽¹⁾

(Reference for a preliminary ruling — Common regulatory framework for electronic communications networks and services — Directive 2002/21/EC — Articles 4 and 19 — National Regulatory Authority — Harmonisation measures — Recommendation 2009/396/EC — Legal scope — Directive 2002/19/EC — Articles 8 and 13 — Operator designated as having significant market power on a market — Obligations imposed by national regulatory authorities — Price control and cost accounting obligations — Fixed and mobile call termination rates — Scope of the review that national courts can exercise over the decisions of national regulatory authorities)

(2016/C 419/15)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicants: Koninklijke KPN NV, KPN BV, T-Mobile Netherlands BV, Tele2 Nederland BV, Ziggo BV, Vodafone Libertel BV, Ziggo Services BV, formerly UPC Nederland BV, Ziggo Zakelijk Services BV, formerly UPC Business BV

Defendant: Autoriteit Consument en Markt (ACM)

Operative part of the judgment

1. Article 4(1) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009, read in conjunction with Articles 8 and 13 of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), as amended by Directive 2009/140, must be interpreted as meaning that a national court, hearing a dispute concerning the legality of a tariff obligation imposed by the national regulatory authority for the provision of fixed and mobile call termination services, may depart from Commission Recommendation 2009/396/EC of 7 May 2009 on the regulatory treatment of fixed and mobile termination rates in the EU advocating the 'pure Bulric' (Bottom-Up Long-Run Incremental Costs) cost model as the appropriate price regulation measure in the termination market only where it considers that this is required on grounds related to the facts of the individual case, in particular the specific characteristics of the market of the Member State in question.
2. EU law must be interpreted as meaning that a national court hearing a dispute concerning the legality of a tariff obligation imposed by the national regulatory authority for the provision of fixed and mobile call termination services can assess the proportionality of that obligation in the light of the objectives set out in Article 8 of Directive 2002/21, as amended by Directive 2009/140, and Article 13 of Directive 2002/19, as amended by Directive 2009/140, and take into account the fact that the obligation has the effect of promoting the interests of end-users on a retail market which has not been earmarked for regulation.