Judgment of the Court (Second Chamber) of 21 December 2016 (request for a preliminary ruling from the Østre Landsret) — TDC A/S v Teleklagenævnet, Erhvervs- og Vækstministeriet

(Case C-327/15) ([1])

(Reference for a preliminary ruling — Electronic communications networks and services — Directive 2002/22/EC — Universal service — Articles 12 and 13 — Calculation of the cost of universal service obligations — Article 32 — Compensation for costs relating to additional mandatory services — Direct effect — Article 107(1) and Article 108(3) TFEU — Maritime radio safety and emergency services in Denmark and Greenland — National rules — Submission of an application for compensation for costs relating to additional mandatory services — Three-month time limit — Principles of equivalence and effectiveness)

(2017/C 053/15)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: TDC A/S

Defendants: Teleklagenævnet, Erhvervs- og Vækstministeriet

Operative part of the judgment

1. *The provisions of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) and, in particular, Article 32 thereof, must be interpreted as precluding national legislation which provides for a compensation mechanism for the provision of additional mandatory services by virtue of which an undertaking is not entitled to compensation from the Member State for the net cost of the provision of an additional mandatory service where the profits made by that undertaking on other services related to the universal service obligation are greater than the loss arising from the provision of the additional mandatory service.*

2. *Directive 2002/22 must be interpreted as precluding national legislation under which an undertaking designated as the provider of additional mandatory services is entitled to compensation from the Member State for the net cost of providing those services only if that cost constitutes an unfair burden on that undertaking.*

3. *Directive 2002/22 must be interpreted as precluding national legislation under which the net cost borne by an undertaking designated to fulfil a universal service obligation is the result of the difference between all the revenue and all the costs connected with the provision of the service in question, including the revenue and the costs which the undertaking would also have registered had it not been a universal service operator.*

4. *In circumstances such as those at issue in the main proceedings, the fact that the undertaking entrusted with an additional mandatory service, within the meaning of Article 32 of Directive 2002/22, provides that service not only on the territory of Denmark but also on that of Greenland does not make any difference to the interpretation of the provisions of that directive.*

5. *Article 32 of Directive 2002/22 must be interpreted as having direct effect, inasmuch as it prohibits the Member States from making the undertaking responsible for providing an additional mandatory service bear all or part of the costs connected with the provision of that service.*

6. *The principles of good faith, equivalence and effectiveness must be interpreted as not precluding legislation, such as that at issue in the main proceedings, which makes the submission of applications for compensation for the loss in the previous financial year by the operator responsible for a universal service subject to a time limit of three months running from the expiry of the period within which that operator is required to send an annual report to the competent national authority, provided that that time limit is no less favourable than that provided for in national law for an analogous application and that it is not such as to render impossible in practice or excessively difficult the exercise of rights conferred on undertakings by Directive 2002/22, which is for the referring court to ascertain.*

(1) OJ C 294, 7.9.2015.

Judgment of the Court (Eighth Chamber) of 21 December 2016 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Bietergemeinschaft Technische Gebäudebetreuung GesmbH und Caverion Österreich GmbH v Universität für Bodenkultur Wien, VAMED Management und Service GmbH & Co. KG in Wien

(Case C-355/15) (1)

(Reference for a preliminary ruling — Public procurement — Directive 89/665/EEC — Review procedures in the area of public procurement — Article 1(3) — Legal interest in bringing proceedings — Article 2a (2) — Concept of a 'tenderer concerned' — Right of a tenderer definitively excluded by the contracting authority to seek review of a subsequent award decision)

(2017/C 053/16)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Bietergemeinschaft Technische Gebäudebetreuung GesmbH und Caverion Österreich GmbH

Defendants: Universität für Bodenkultur Wien, VAMED Management und Service GmbH & Co. KG in Wien

Operative part of the judgment

Article 1(3) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007, must be interpreted as not precluding a tenderer who has been excluded from a public procurement procedure by a decision of the contracting authority which has become final from being refused access to a review of the decision awarding the public contract concerned and of the conclusion of the contract where only that unsuccessful tenderer and the successful tenderer submitted bids and the unsuccessful tenderer maintains that the successful tenderer's bid should also have been rejected.

(1) OJ C 320, 28.9.2015.