

Question referred

Must Article 32(3) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), ⁽¹⁾ having regard to recital 29 of the Visa Code and the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, be interpreted as requiring the Member States to guarantee an effective remedy (appeal) before a court of law?

⁽¹⁾ OJ 2009 L 243, p. 1.

Request for a preliminary ruling from the Curtea de Apel București (Romania) lodged on 21 July 2016 — Compania Națională de Autostrăzi și Drumuri Naționale din România SA v Ministerul Fondurilor Europene — Direcția Generală Managementul Fondurilor Externe

(Case C-408/16)

(2016/C 383/04)

Language of the case: Romanian

Referring court

Curtea de Apel București

Parties to the main proceedings

Applicant: Compania Națională de Autostrăzi și Drumuri Naționale din România SA

Defendants: Ministerul Fondurilor Europene — Direcția Generală Managementul Fondurilor Externe

Questions referred

1. Is Article 15(c) of Directive 2004/18 ⁽¹⁾ to be interpreted as permitting a Member State not to apply the directive, following its accession to the European Union, if it has the benefit of a finance agreement concluded with the European Investment Bank which was signed before the accession and under which specific requirements imposed by the lending institution, such as those at issue in the present case, which are more restrictive than those laid down by the directive, are applied to public contracts to be awarded?
2. Is Directive 2004/18 to be interpreted as precluding a legislative measure under national law, such as O.U.G. No 72/2007 (Decree Law No 72/2007), which provides for the application of the European Investment Bank Guide to Procurement, by way of derogation from the legislative measure by which the directive was transposed into national law, namely, in the present case, O.U.G. No 34/2006 (Decree Law No 34/2006), on grounds such as those set out in the explanatory memorandum, for the purpose of compliance with the finance agreement concluded prior to accession?
3. On a proper interpretation of Article 9(5) and Article 60(a) of Regulation No 1083/2006, ⁽²⁾ may such a public contract, concluded in compliance with the European Investment Bank Guide to Procurement and with national law, be regarded as consistent with EU law and eligible for European non-reimbursable financial support, granted retrospectively?

4. In the event that Question 3 is answered in the negative, if such a public contract was nonetheless considered to be consistent with EU law at the time the check was carried out to verify compliance with the qualification requirements for the Programului operațional sectorial ‘Transport’ 2007-2013 (Sectoral Operational Programme ‘Transport’ 2007 2013), does such an alleged breach of EU public procurement law (determination of certain pre-selection criteria for the tenderers which are similar to those set out in the European Investment Bank Guide to Procurement and more restrictive than those laid down in Directive 2004/18 — as set out in paragraphs 12 to 14 of the present order for reference) constitute an ‘irregularity’ within the meaning of Article 2(7) of Regulation No 1083/2006, giving rise to an obligation on the part of the Member State concerned to make a financial correction/percentage reduction pursuant to Article 98 (2) of the regulation?

⁽¹⁾ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

⁽²⁾ Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25).

Request for a preliminary ruling from the Tribunal Judicial da Comarca de Faro (Portugal) lodged on 27 July 2016 — Luís Manuel Piscarreta Ricardo v Portimão Urbis, EM, SA — in liquidation and Others

(Case C-416/16)

(2016/C 383/05)

Language of the case: Portuguese

Referring court

Tribunal Judicial da Comarca de Faro

Parties to the main proceedings

Applicant: Luís Manuel Piscarreta Ricardo

Defendants: Portimão Urbis, EM, SA — in liquidation, Município de Portimão, and EMARP — Empresa Municipal de Águas e Resíduos de Portimão, EM, SA

Questions referred

1. Does Article 1, and in particular paragraph (b) thereof, of Council Directive 2001/23/EC ⁽¹⁾ of 12 March 2001 apply to a situation such as that of the present case, in which a municipal undertaking (whose sole shareholder is the municipality) is dissolved (by decision of the municipality’s executive body), and the activities carried on by it are allocated in part to the municipality and in part to another municipal undertaking (whose objects were altered to that end — and which is also wholly owned by the municipality), that is, in those circumstances may it be considered that there has been a transfer of a business within the meaning of the abovementioned directive?
2. Must an employee not in active service (that is, having had his employment contract suspended) be considered included in the concept of ‘employee’ within the meaning of Article 2(1)(d) of Directive 2001/23/EC and, accordingly, must the rights and obligations arising from the contract of employment be considered transferred to the transferee, in accordance with Article 3(1) of Directive 2001/23/EC?