

## 2. Infringement of Directive 2005/36/EC and Article 49 TFEU on the freedom of establishment.

The Commission considers that the requirements in paragraph 2 of section A of the single article of Ministerial Decision No 109088/12.12.2011, in accordance with which the mediation training certificate must confirm the teaching methods, the number of participants, the number and qualifications of the trainers, the procedure for the examination and evaluation of candidates and the means of ensuring the integrity of that procedure, exceed what can be required for the evaluation of the level of professional knowledge and qualifications which the certificate-holder is certified to possess and do not permit a correct assessment of the question whether the training of the person concerned covers matters that are substantially different from those covered by the required accreditation in Greece. For those reasons the abovementioned provision is contrary to Articles 13, 14 and 50 of, and Annex VII to, Directive 2005/36/EC.

Further, paragraph 5 of section A of the above Ministerial Decision requires foreign mediators with full professional qualifications to demonstrate that in addition they possess experience of having taken part in at least three mediation procedures before their qualifications are recognised in Greece, although that requirement is not imposed on mediators who obtain their professional training in Greece. Consequently, the abovementioned provision is contrary to Article 13 of Directive 2005/36/EC, which provides that the competent authority of the host Member State is to permit access to and pursuit of the profession under the same conditions as apply to its nationals to applicants who are certified in another Member State, and is in breach of the principle of the prohibition of discrimination enshrined in Article 49 TFEU.

<sup>(1)</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

<sup>(2)</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005, on the recognition of professional qualifications (OJ 2005 L 255, p. 22).

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### Appeal brought on 5 January 2018 by Ms against the order of the General Court (First Chamber) delivered on 31 May 2017 in Case T-17/16 Ms v Commission

(Case C-19/18 P)

(2018/C 083/23)

*Language of the case: French*

#### Parties

*Appellant:* Ms (represented by: L. Levi, avocat)

*Other party to the proceedings:* European Commission

#### Form of order sought

- Set aside the order of the General Court of 31 May 2017 in Case T-17/16;
- consequently, refer the case back to the General Court for judgment on the substance of the action brought before it at first instance, or if the Court of Justice were to consider that the state of the proceedings permits final judgment, to grant the appellant the relief sought at first instance and, accordingly,
- hold that the Commission is non-contractually liable on the basis of Article 268 and the second paragraph of Article 340 TFEU;
- order the production of the documents declared confidential by the Commission and providing the necessary basis for the exclusion decision;
- order payment of compensation for the non-material harm resulting from the Commission's wrongful conduct, assessed *ex aequo et bono* at EUR 20 000;
- order the Commission to publish a letter of apology to the applicant and to reinstate him within Team Europe;

— order the European Commission to pay the costs at first instance and on appeal.

### **Pleas in law and main arguments**

The order under appeal is vitiated by an error of law in the legal classification of the basis of the action for damages brought before the General Court and infringement of the General Court's duty to state reasons.

The order under appeal is also vitiated by an error of law in the legal classification of the letter of agreement and infringement of the General Court's duty to state reasons. The latter distorted the file.

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## **Action brought on 16 January 2018 — European Commission v Republic of Bulgaria**

**(Case C-27/18)**

(2018/C 083/24)

*Language of the case: Bulgarian*

### **Parties**

*Applicant:* European Commission (represented by: J. Samnadda, Y. Marinova and G. von Rintelen, acting as Agents)

*Defendant:* Republic of Bulgaria

### **Form of order sought**

The Commission claims that the Court should:

- declare that, by failing to adopt, by 10 April 2016 at the latest, the laws, regulations and administrative provisions necessary to ensure compliance with *Directive 2014/26/EU* <sup>(1)</sup> of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ L 84, 20.3.2014, p. 72), or in any event, by failing to notify the Commission of such provisions, the Republic of Bulgaria has failed to fulfil its obligations under Article 43(1) of that directive;
- order the Republic of Bulgaria, pursuant to Article 260(3) TFEU, to pay a penalty payment, in view of its failure to fulfil its obligation to notify the Commission of the measures transposing Directive 2014/26/EU, in the amount of EUR 19 121,60 per day, calculated as from the date of delivery of the judgment upholding the application;
- order the Republic of Bulgaria to pay the costs relating to the proceedings.

### **Pleas in law and main arguments**

1. Under Article 43(1) of Directive 2014/26/EU, Member States were required to bring into force the laws, regulations and administrative provisions necessary to ensure compliance with the directive by 10 April 2016 and immediately to inform the Commission thereof. In view of the failure to notify the national measures transposing the directive, the Commission has decided to bring the matter before the Court of Justice.
2. In its application the Commission proposes that the Republic of Bulgaria be ordered to pay a periodic penalty payment in the amount of EUR 19 121,60 per day. The amount of that periodic penalty payment has been calculated by taking into account the serious nature and duration of the infringement, and the deterrent effect, in the light of that Member State's ability to pay.

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<sup>(1)</sup> OJ 2014 L 84, p. 72.