

Re:

Reference for a preliminary ruling — College van Beroep voor het bedrijfsleven — Interpretation of Article 6 of Commission Decision C (95) 1753 of 16 October 1995 concerning a contribution from the European Regional Development Fund (ERDF) and the European Social Fund (ESF) for an operational programme within the framework of the SME Community initiative for the benefit of areas eligible under Objectives 1 and 2 in the Netherlands — Whether unconditional and sufficiently clear and precise to be directly applicable with regard to the final beneficiary — Interpretation of Article 38(1)(h) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1) — Non-recovery, following an irregularity, vis-à-vis a beneficiary who was not informed of the Commission's decision

Operative part of the judgment

Where the conditions for the grant of a financial assistance by the Community to a Member State are set out in the grant decision but that Member State has neither published them nor made them known to the ultimate beneficiary of the assistance, it is not contrary to Community law to apply the principle of legal certainty so as to preclude repayment by that beneficiary of the amounts wrongly paid, provided that it is possible to establish the beneficiary's good faith. In such a case, the Member State concerned may be held financially liable for the amounts not recovered in order to give effect to the Community's right to obtain repayment of the amount of the assistance.

(¹) OJ C 60, 11.3.2006.

Judgment of the Court (First Chamber) of 21 June 2007 (references for a preliminary ruling from the Cour du travail de Bruxelles, Belgium) — National Pensions Office v Emilienne Jonkman (C-231/06), Hélène Vercheval (C-232/06) and Noëlle Permesaen (C-233/06) v National Pensions Office

(Case C-231/06 to C-233/06) (¹)

(Equal treatment for men and women — Statutory pension scheme — Directive 79/7/EEC — Air hostesses — Grant of a pension equal to that of stewards — Payment of adjustment contributions in a single payment — Interest payments — Principle of effectiveness — Obligations on a Member State as a result of a preliminary ruling)

(2007/C 183/21)

Language of the case: French

Referring court

Cour du travail de Bruxelles

Parties to the main proceedings

Appellants: National Pensions Office, Noëlle Permesaen (C-233/06)

Respondents: Emilienne Jonkman (C-231/06), Hélène Vercheval (C-232/06), National Pensions Office

Re:

Reference for a preliminary ruling — Cour du travail de Bruxelles (Labour Court, Brussels) — Interpretation of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24) — Possibility for a woman who was excluded from a more favourable pension scheme to be entitled to membership thereof retroactively, on making payment of the contributions relating to the membership period in question, in the form of a lump sum payment, and of late payment interest

Operative part of the judgment

1. When a Member State adopts rules intended to allow persons of a particular sex, originally discriminated against, to become eligible throughout their retirement for the pension scheme applicable to persons of the other sex, Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security:

— does not preclude that Member State from making such membership dependent upon the payment of adjustment contributions consisting of the difference between the contributions paid by the persons originally discriminated against in the period during which the discrimination took place and the higher contributions paid by the other category of persons during the same period, together with interest to compensate for inflation,

— does preclude, by contrast, that Member State from requiring that payment of adjustment contributions to be made together with interest other than that to compensate for inflation,

— also precludes a requirement that that payment be made as a single sum, where that condition makes the adjustment concerned impossible or excessively difficult in practice. That is the case in particular where the sum to be paid exceeds the annual pension of the interested party.

2. Following a judgment given by the Court on an order for reference from which it is apparent that the national legislation is incompatible with Community law, it is for the authorities of the Member State concerned to take the general or particular measures necessary to ensure that Community law is complied with, by ensuring in particular that national law is changed so as to comply with Community law as soon as possible and that the rights which individuals derive from Community law are given full effect.

3. Where discrimination infringing Community law has been found, for as long as measures reinstating equal treatment have not been adopted, the national court must set aside any discriminatory provision of national law, without having to request or await its prior removal by the legislature, and apply to members of the disadvantaged group the same arrangements as those enjoyed by the persons in the other category.

(¹) OJ C 190, 12.8.2006.

**Judgment of the Court (Seventh Chamber) of 14 June 2007
— Commission of the European Communities v Grand
Duchy of Luxembourg**

(Case C-321/06) (¹)

**(Failure of a Member State to fulfil obligations — Directive
2002/14/EC — Informing and consulting employees —
Failure to transpose within the period prescribed)**

(2007/C 183/22)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: J. Enegren and G. Rozet, acting as Agents)

Defendant: Grand Duchy of Luxembourg (represented by: C. Schiltz, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the period prescribed, all the provisions necessary to comply with Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community — Joint declaration of the European Parliament, the Council and the Commission on employee representation (OJ 2002 L 80, p. 29)

Operative part of the judgment

The Court:

1. Declares that, by failing to adopt, within the period prescribed, all the laws, regulations and administrative provisions necessary to comply with Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;
2. Orders the Grand Duchy of Luxembourg to pay the costs.

(¹) OJ C 212, 2.9.2006.

**Judgment of the Court (Sixth Chamber) of 14 June 2007 —
Commission of the European Communities v Kingdom of
Sweden**

(Case C-333/06) (¹)

**(Failure of a Member State to fulfil obligations — Regulation
(EC) No 261/2004 — Air transport — Denied boarding and
cancellation or long delays of flights — Compensation and
assistance to passengers — Adoption of sanctions)**

(2007/C 183/23)

Language of the case: Swedish

Parties

Applicant: Commission of the European Communities (represented by: R. Vidal Puig and K. Simonsson, Agents)

Defendant: Kingdom of Sweden (represented by: A. Kruse, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to take the measures necessary to comply with Article 16 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delays of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1) — Laying down of effective, proportionate and dissuasive sanctions

Operative part of the judgment

The Court:

1. Declares that, by failing to lay down the sanctions for infringements of the provisions of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delays of flights, and repealing Regulation (EEC) No 295/91, the Kingdom of Sweden has failed to fulfil its obligations under Article 16 of that directive;
2. Dismisses the remainder of the action;
3. Orders the Kingdom of Sweden to pay the costs.

(¹) OJ C 224, 16.9.2006.