Appeal brought on 25 November 2016 by the European Commission against the judgment of the General Court (Eighth Chamber) in Joined Cases T-353/14 and T-17/15, Italy v Commission)

(Case C-621/16 P)

(2017/C 046/18)

Language of the case: Italian

Parties

Appellant: European Commission (represented by: L. Pignataro-Nolin and G. Gattinara, acting as Agents)

Other parties to the proceedings: Italian Republic, Republic of Lithuania

Forms of order

The Commission claims that the Court of Justice should:

— set aside the judgment under appeal;

— if the Court considers that the state of the proceedings so permits, dismiss the action at first instance as unfounded;

— order the Italian Republic to pay the cost of the present proceedings and those at first instance;

— order the Republic of Lithuania to bear its own costs.

Grounds of appeal and main arguments

In support of its appeal, the Commission puts forward the following grounds: (1) an error of law in the interpretation of the legal nature of the 'General Provisions' applicable to competitions and an error of law in the interpretation of Article 7(1) of Annex III to the Staff Regulations of Officials of the European Union ('the Staff Regulations'), resulting in erroneous reasoning; (2) error of law and breach of the obligation to state reasons in interpreting Article 1d of the Staff Regulations; (3) errors of law in the interpretation (which is, moreover, contradictory) of Article 28f of the Staff Regulations and in the interpretation of the criteria for judicial review by the General Court; (4) error of law in interpreting Article 2 of Regulation No 1/58 (OJ English Special Edition, 1952-58, p. 59).

1. The first ground is divided into four parts. In the first part, the Commission submits that the General Court erred in of law in the interpretation of the legal nature of the 'General Provisions' applicable to general competitions (OJ 2014 C 60 A/1), since, according to the Commission, those provisions laid down specific new obligations in respect of the conduct of the competition procedure, obligations that the contested competition notices did not reflect. By the second part of the first ground, the Commission maintains that the General Court erred in law in interpreting Article 7(1) of Annex III to the Staff Regulations, in so far as it found that EPSO does not have the regulatory power to lay down general and abstract rules in respect of the language regime of the competitions which it organises. According to the Commission, EPSO has such a power. In that regard, the Commission also alleges breach of the obligation to state reasons, in so far as, at the end in paragraph 57 of the judgment under appeal, the General Court contradicts itself, by stating that EPSO still has the power to assess the needs, including linguistic needs, of the individual institutions when organising various competitions. By the third part of the first ground, the Commission contends that the General Court was wrong to consider that those provisions were simply measures laying down the criteria for the choice of the second language in competition procedures organised by EPSO, since those provisions established, on the contrary, with binding effect, the criteria justify that choice. Lastly, by the fourth part of the first ground, the Commission submits that the General Court misinterpreted the nature and content of the contested notices in finding that, in respect of the language regime, the notices constituted sources of new specific obligations, thereby also acting in breach of its duty to state reasons when rejecting the plea of inadmissibility submitted by the Commission; in that regard, according to the Commission, the contested notices merely confirmed what is stated in the General Provisions.

2. The second ground is divided into two parts. In the first part of the second ground, the Commission alleges an error of law in interpreting Article 1d of the Staff Regulations, according to which a limitation in the choice of a second language does not necessarily constitute discrimination, and may be justified in the light of a general objective, such as the interest of the service relation to staff policy. In the second part of the second ground, the Commission maintains that the General Court acted in breach of its obligation to state reasons, on the ground that, in searching for a justification for the limitation of the choice of second language, the General Court, in the judgment under appeal, confined itself to examining notices of competition solely, whereas it should have taken into consideration the General Provisions and their content.

3. The third ground is divided into three parts. In the first part of the third ground, the Commission submits that the General Court could not consider, without erring in its interpretation of Article 28f of the Staff Regulations, that the requirements relating to linguistic ability do not form part of a candidate's competences to which Article 27 of the Staff Regulations refers. In the second part of the third ground, the Commission claims that the General Court incorrectly defined the parameters of its powers of review, which should have been limited to ascertaining whether there had been a manifest error of assessment or arbitrary treatment. By the third part of the third ground, the Commission argues that the General Court overstepped the bounds of its powers of review, by carrying out an assessment of the merits of the decision not to include, in addition to the three languages mentioned in the competition notices (English, German and French), other languages; the General Court thereby exercised the power reserved to the administration.

4. By the fourth ground of appeal, the Commission submits that the General Court erred in law in its interpretation of Article 2 of Regulation No 1/58 by considering that communications between EPSO and the candidates came within the scope of that provision, thus excluding any possibility of restricting the choice of second language. In fact, the possibility of imposing such a restriction is derived, according to the Commission, from Article 1d(5) and (6) of the Staff Regulations, to which candidates in a competition procedure are also subject.

Request for a preliminary ruling from the Sø- og Handelsretten (Denmark) lodged on 7 December 2016 — Ernst & Young P/S v Konkurrencerådet

(Case C-633/16)

(2017/C 046/19)

Language of the case: Danish

Referring court

Sø- og Handelsretten

Parties to the main proceedings

Applicant: Ernst & Young P/S

Defendant: Konkurrencerådet

Questions referred

1. What criteria are to be applied in assessing whether the conduct or actions of an undertaking are covered by the prohibition in Article 7(1) of Council Regulation No 139/2004 ([1]) on the control of concentrations between undertakings (the prohibition of advance implementation), and does implementing action within the meaning of Article 7(1) presuppose that the action, wholly or in part, factually or legally, forms part of the actual change of control or merging of the continuing activities of the participating undertakings which — provided the quantitative thresholds are met — gives rise to the obligation of notification?

2. Can the termination of a cooperation agreement, as in the present case, which is announced under circumstances corresponding to those described in the order for reference constitute an implementing action covered by the prohibition in Article 7(1) of Council Regulation No 139/2004, and what criteria are then to be applied in making a decision?

3. Does it make any difference in answering Question 2 whether the termination has actually given rise to market effects relevant to competition law?