Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

25 April 2013 *

(Joint undertakings — Contracts concluded with members of staff — Applicable rules — Regulation (EC) No 876/2002)

In Case C-89/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hof van Cassatie (Belgium), made by decision of 30 January 2012, received at the Court on 17 February 2012, in the proceedings

Rose Marie Bark

v

Galileo Joint Undertaking, in liquidation,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, J. Malenovský (Rapporteur), U. Lõhmus, M. Safjan and A. Prechal, Judges,

Advocate General: P. Mengozzi,

Registrar: M.-A. Gaudissart, head of unit,

having regard to the written procedure and further to the hearing on 30 January 2013,

after considering the observations submitted on behalf of:

— Ms Bark, by W. van Eeckhoutte, advocaat,

— Galileo Joint Undertaking, in liquidation, by P. Van Ommeslaghe, avocat,

— the European Commission, by J. Currall and W. Roels, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Dutch.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 11(2) of the Statutes of the Galileo Joint Undertaking, set out in the annex to Council Regulation (EC) No 876/2002 of 21 May 2002 setting up the Galileo Joint Undertaking (OJ 2002 L 138, p. 1), as amended by Council Regulation (EC) No 1943/2006 of 12 December 2006 (OJ 2006 L 367, p. 21) ('Regulation No 876/2002'), and of Article 2 of that regulation.

2 The request has been made in proceedings between Ms Bark and Galileo Joint Undertaking ('Galileo') concerning payment of arrears of salary and holiday pay.

Legal context

European Union law

Regulation No 876/2002

3 Under Article 1 of Regulation No 876/2002:

'For the implementation of the development phase of the Galileo programme, a Joint Undertaking within the meaning of Article 171 of the Treaty is hereby set up until 31 December 2006.

The aim of the Joint Undertaking shall be to ensure the unity of the administration and the financial control of the project for the research, development and demonstration phase of the Galileo programme, and to this end mobilise the funds assigned to that programme.

The Joint Undertaking shall be considered as an international organisation within the meaning of the second indent of Article 15(10) of Directive 77/388/EEC and the second indent of Article 23(1) of Directive 92/12/EEC.

Its seat shall be located in Brussels.'

4 Article 2 of Regulation No 876/2002 provides:

'The Statutes of the Joint Undertaking, as set out in the Annex hereto, are hereby adopted'.

5 Article 11(2) and (4) of the Statutes of the Galileo Joint Undertaking provides:

'(2) The members of the staff of the Joint Undertaking shall have a fixed-term contract based on the "conditions of employment of other servants of the European Communities".

…

(4) The Administrative Board shall adopt the necessary implementing arrangements.'

Regulation No 219/2007

6 According to Article 3 of Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR) (OJ 2007 L 64, p. 1):

'The Statutes of the Joint Undertaking, as set out in the Annex hereto constitute an integral part of this Regulation and are hereby adopted'.

7 Article 8(2) of the Statutes of the Joint Undertaking to develop the new generation European air traffic management system ('the SESAR Joint Undertaking') provides:

'The members of the staff of the Joint Undertaking shall have a fixed-term contract based on the conditions of employment of servants of the European Communities.'

Regulation No 71/2008

8 Under Article 3 of Council Regulation (EC) No 71/2008 of 20 December 2007 setting up the Clean Sky Joint Undertaking (OJ 2008 L 30, p. 1):

'The Clean Sky Joint Undertaking shall be a Community body with legal personality. In all the Member States of the Community, it shall enjoy the most extensive legal capacity accorded to legal persons under the laws of those States. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.'

9 Article 7(1) of that regulation provides:

'The Staff Regulations and the rules adopted jointly by the institutions of the Communities for the purpose of applying them shall apply to the staff of the Clean Sky Joint Undertaking and its Executive Director.'

Regulation No 72/2008

10 Article 3 of Council Regulation (EC) No 72/2008 of 20 December 2007 setting up the ENIAC Joint Undertaking (OJ 2007 L 30, p. 21) is worded as follows:

'The ENIAC Joint Undertaking shall be a Community body and shall have legal personality. In each of the Member States, it shall enjoy the most extensive legal capacity accorded to legal persons under the laws of those States. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.'

11 Article 7(1) of that regulation provides:

'The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for the purpose of applying these Staff Regulations and Conditions of Employment shall apply to the staff of the ENIAC Joint Undertaking and its executive director.'

Regulation No 73/2008

12 Article 3 of Council Regulation (EC) No 73/2008 of 20 December 2007 setting up the Joint Undertaking for the implementation of the Joint Technology Initiative on Innovative Medicines (OJ 2007 L 30, p. 38) provides:

'The … Joint Undertaking [for the implementation of the Joint Technology Initiative on Innovative Medicines ('the IMI Joint Undertaking')] shall be a Community body and shall have legal personality. In each of the Member States of the European Community, it shall enjoy the most extensive legal capacity accorded to legal persons under the laws of those States. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.'

13 Article 7(1) of Regulation No 73/2008 is worded as follows:

'The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for the purpose of applying these Staff Regulations and Conditions of Employment shall apply to the staff of the IMI Joint undertaking and its Executive Director.'

Regulation No 74/2008

14 Article 3 of Council Regulation (EC) No 74/2008 of 20 December 2007 on the establishment of the ARTEMIS Joint Undertaking to implement a Joint Technology Initiative in Embedded Computing Systems (OJ 2008 L 30, p. 52) provides:

'The ARTEMIS Joint Undertaking shall be a Community body and shall have legal personality. In each of the Member States of the European Community, it shall enjoy the most extensive legal capacity accorded to legal persons under the laws of those States. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.'

15 Article 7(1) of Regulation No 74/2008 is worded as follows:

'The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for the purpose of applying these Staff Regulations and Conditions of Employment shall apply to the staff of the ARTEMIS Joint Undertaking and its Executive Director.'

Belgian legislation

16 According to Article 51 of the Law of 5 December 1968 concerning collective labour agreements and joint committees (*Belgisch Staatsblad* of 15 January 1969), the hierarchy of norms in respect of obligations in labour relations between employers and employees is as follows:

'1. the mandatory rules of law;

…

4. the individual written agreement;

…'

The dispute in the main proceedings and the question submitted for a preliminary ruling

17 Ms Bark commenced employment at Galileo on 1 September 2003, as an executive secretary, for a fixed term, namely until 31 May 2006.

18 Ms Bark's gross annual salary, set out in her employment contract, amounted to EUR 53 719.12. On 1 March 2004, the appellant was awarded a 5% salary increase in recognition of the performance of her tasks.

19 On 23 August 2004, Ms Bark contested the scale on which her salary was based, on the ground that it was inconsistent with the grades of the Community civil service.

20 In his reply to Ms Bark's claim, the director of Galileo referred to the applicable Belgian legislation and to the parties' salary agreement in Article 7 of the employment contract. He also stated in that reply that the Community rules did not require Galileo to apply the pay system applicable to officials of the European Communities since the Statutes of the Galileo Joint Undertaking stipulated only that the conditions of employment had to be based on the conditions applicable to other servants of the European Communities.

21 On 4 November 2004, an amendment to Ms Bark's employment contract was signed, according to which she attained the post of 'executive assistant' and her annual salary was fixed at EUR 70 176.30 from 1 November 2004.

22 On 28 January 2005, Ms Bark again contested the salary scale applicable to her employment.

23 On 16 February 2005, Galileo rejected Ms Bark's claim, referring to the signing of the original employment contract of 26 August 2003 and to that of the amendment in force from 1 November 2004, in which Ms Bark had expressly accepted the salary.

24 On 14 March 2006, the parties to the main proceedings concluded a new amendment to that employment contract, extending the agreed term until 31 December 2006. All the other clauses and contractual terms continued to apply.

25 On 20 December 2006, Ms Bark again contested the salary scale applied to her. By letter of 9 January 2007 referring to its previous answer, Galileo rejected her claim.

26 Since the parties had failed to reach agreement, on 28 December 2007, Ms Bark brought proceedings against Galileo before the Arbeidsrechtbank te Brussel (Brussels Labour Court) for payment of arrears of salary and of holiday pay commensurate therewith.

27 By decision of 12 February 2009, the Arbeidsrechtbank te Brussel declared Ms Bark's claim to be admissible but unfounded, on account of the clauses relating to salary in the employment contract concluded between the parties and in the amendment thereto, and on the ground that no obligation to apply the same pay conditions as those applicable to the staff of other European Union institutions could be inferred from Article 11 of the Statutes of the Galileo Joint Undertaking.

28 Ms Bark brought an appeal against that decision.

29 By judgment of 23 April 2010, the Arbeidshof te Brussel (Higher Labour Court, Brussels) declared that appeal admissible, but unfounded.

30 Ms Bark applied for review of that judgment.

31 It is in those circumstances that the Hof van Cassatie (Court of Cassation) decided to stay the proceedings and to submit the following question to the Court:

'Should Article 11(2) of the Statutes of the Galileo Joint Undertaking, annexed to [Regulation No 876/2002], in conjunction with Article 2 of that regulation, be interpreted as meaning that the conditions of employment of other servants of [the European Communities], and more specifically the pay conditions of those conditions of employment, are applicable to staff of the Galileo Joint Undertaking who are employed on fixed-term contracts?'

The question submitted for a preliminary ruling

32 By its question, the referring court asks, in essence, whether Article 11(2) of the Statutes of the Galileo Joint Undertaking must be interpreted as meaning that the conditions of employment of other servants of the European Communities, and more specifically the pay conditions of those conditions of employment, are applicable to staff of Galileo who are employed on fixed-term contracts.

33 Under Article 11(2) of the Statutes of the Galileo Joint Undertaking, members of its staff 'shall have a fixed-term contract based on the "conditions of employment of other servants of the European Communities"'.

34 However, it should, first of all, be pointed out that there is some divergence between the various language versions of that provision as concerns the question of the applicability of those conditions to members of staff of Galileo who have fixed-term contracts. In effect, although, in particular, the French ('*s'inspirant de*') or Italian ('*si ispira*') language versions employ, in that regard, the term 'guided by', the Spanish ('*basado en*'), Czech ('*vychází z*'), Polish ('*oparte na*'), English or Dutch ('*opgesteld op basis van*') language versions, use, by contrast, the term 'based on'. The German language version refers to the term 'according to' ('*gemäß*').

35 Ms Bark considers, with reference, in particular, to the German language version of that provision, that it requires that the 'conditions of employment of other servants of the European Communities' and, in particular, the salary rates defined therein, apply to members of staff of Galileo who have fixed-term contracts.

36 It is settled case-law that the wording used in one language version of a provision of European Union law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Such an approach would be incompatible with the requirement of the uniform application of European Union law (see Case C-149/97 *Institute of the Motor Industry* [1998] ECR I-7053, paragraph 16; and Case C-187/07 *Endendijk* [2008] ECR I-2115, paragraph 23).

37 It is, therefore, necessary to specify which uniform interpretation should be applied to Article 11(2) of the Statutes of the Galileo Joint Undertaking, by taking into account all the language versions of that provision.

38 In that regard, it should be noted that, despite the subtle differences observed between the different language versions referred to, none of them employ the term 'apply'. They refer to a less precise term, which expresses the existence of an indirect, mediate, connection between the status of the members of staff of Galileo, on the one hand, and the 'conditions of employment of other servants of the European Communities', on the other hand.

39 It follows that the Community legislature did not intend the 'conditions of employment of other servants of the European Communities' to apply directly to members of staff of Galileo who have fixed-term contracts. The different language versions support the conclusion that that legislature intended to grant Galileo room for manœuvre, it being understood that those conditions should be used, by that joint undertaking, as an indirect source.

40 Moreover, where there is divergence between two language versions of a European Union legal text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see, to that effect, Case C-510/10 *DR and TV2 Danmark* [2012] ECR, paragraph 45).

41 It is therefore necessary to determine whether the analysis of the context of the provision and the objective pursued by it confirm the interpretation set out in paragraph 39 of this judgment.

42 As the Commission pointed out at the hearing, and as is apparent from the explanatory memorandum accompanying the proposal for Regulation No 876/2002 (OJ 2001 C 270 E, p. 119), it was considered, during the establishment of Galileo, that a joint undertaking should have a flexible structure and, therefore, could not be regarded as a Community body.

43 Furthermore, the Commission stated at the hearing that the priority for Galileo at the time of its constitution was that of managing the legal consequences of the participation of private capital in that joint undertaking. Concerning, more particularly, the status of the staff of Galileo, the question was, in particular, raised as to whether a private entity with its own legal personality, distinct from that of the European Communities, and which participated in financing a joint undertaking such as Galileo, could, a priori, be required to apply the 'conditions of employment of other servants of the European Communities'.

44 In answer to such difficult questions, and in order to satisfy the need for flexibility, the Community legislature granted Galileo a large degree of autonomy, allowing the latter to fix itself the conditions of employment applicable to the members of its staff having fixed-term contracts, while being based on the 'conditions of employment of other servants of the European Communities'.

45 Indeed, as is apparent also from the explanatory memorandum accompanying the proposal for the regulation amending Regulation No 219/2007 (COM(2008) 483 final), with the launch, for the years 2007 to 2013, of the Seventh Framework Programme for Research and Technological Development, the institutions of the European Union adopted a new approach to the establishment of joint undertakings, according to which they are from now on recognised as 'bodies of the Union', enjoying the benefits and immunities of the European Union. Consequently, the status of European Union officials and the conditions of employment of other servants of the European Union apply to members of staff of those bodies and the Protocol on the privileges and immunities of the European Union applies to those bodies as well as to their staff. However, it needs to be recalled that that new approach, which applied in particular in the context of regulations relating to the CLEAN SKY, ENIAC, IMI and ARTEMIS joint undertakings, and in which it is expressly stated that the status of officials and the conditions of employment of other servants of the European Communities are 'applicable' to the staff of those Community agencies, was, in any event, adopted only in 2007, that is to say after the termination of Galileo's activities.

46 It follows from all the foregoing that the answer to the question referred is that Article 11(2) of the Statutes of the Galileo Joint Undertaking must be interpreted as meaning that the conditions of employment of other servants of the European Communities and, in particular, the salary rates defined therein, do not apply to members of staff of Galileo who have fixed-term contracts.

Costs

47 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Article 11(2) of the Statutes of the Galileo Joint Undertaking, set out in the annex to Council Regulation (EC) No 876/2002 of 21 May 2002 setting up the Galileo Joint Undertaking, as amended by Council Regulation (EC) No 1943/2006 of 12 December 2006 must be interpreted as meaning that the conditions of employment of other servants of the European Communities and, in particular, the salary rates defined therein, do not apply to members of staff of Galileo who have fixed-term contracts.

[Signatures]