

ECJ 2 April 2020, joined cases C-370/17 and C-37/18 (CRPNPAC), Social Insurance

Caisse de retraite du personnel navigant professionnel de l'aéronautique civile (CRPNPAC) – v – Vueling Airlines SA (C-370/17); Vueling Airlines SA – v – Jean-Luc Poignant (C-37/18), French cases

Questions

1. Must Article 11(1)(a) of Regulation No 574/72 be interpreted as meaning that the courts of a Member State, seised in legal proceedings brought against an employer with regard to facts that indicate that E 101 certificates issued under Article 14(1)(a) of Regulation No 1408/71 with respect to workers carrying out their activities in that Member State were fraudulently obtained or used, may disregard those certificates?
2. Must Article 11(1) of Regulation No 574/72 and the principle of the primacy of EU law be interpreted as precluding, in a situation where an employer has, in the host Member State, acquired a criminal conviction based on a definitive finding of fraud made in breach of EU law, a civil court or tribunal of that Member State, bound by the principle of national law that a decision which has the authority of *res judicata* in criminal proceedings also has that authority in civil proceedings, from holding that employer to be liable, solely by reason of that criminal conviction, to pay damages intended to provide compensation to the workers or a pension fund of that Member State who claim to be affected by that fraud?

Ruling

1. Article 11(1)(a) of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005, must be interpreted as meaning that a court or tribunal of a Member State, seised of an action in

legal proceedings brought against an employer with respect to facts that might indicate that E 101 certificates, issued under Article 14(1)(a) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Regulation No 118/97, as amended by Regulation (EC) No 631/2004 of the European Parliament and of the Council of 31 March 2004, were fraudulently obtained and relied on with respect to workers employed in that Member State, can make a finding of fraud and consequently disregard those certificates only if it has satisfied itself that:

1. first, the procedure laid down in Article 84a(3) of that regulation was promptly initiated and the competent institution of the issuing Member State was thus put in a position to review the grounds for the issue of those certificates in the light of the concrete evidence submitted by the competent institution of the host Member State that indicates that those certificates were fraudulently obtained or relied on, and
 2. second, the competent institution of the issuing Member State has failed to undertake such a review and has failed to make a decision, within a reasonable time, on that evidence, cancelling or withdrawing the certificates at issue, where appropriate.
2. Article 11(1) of Regulation No 574/72, in the version amended and updated by Regulation No 118/97, as amended by Regulation No 647/2005, and the principle of the primacy of EU law must be interpreted as precluding, in a situation where an employer has, in the host Member State, acquired a criminal conviction based on a definitive finding of fraud made in breach of EU law, a civil court or tribunal of that Member State, bound by the principle of national law that a decision which has the authority of *res judicata* in criminal proceedings also has that authority in civil proceedings, from holding that employer to be liable, solely by reason of that criminal conviction, to pay damages intended to provide compensation to workers or a pension fund of that Member State who claim to be affected by that fraud.