

2. Article 9(3) of Regulation No 593/2008 must be interpreted as precluding overriding mandatory provisions other than those of the State of the forum or of the State where the obligations arising out of the contract have to be or have been performed from being applied by the court of the forum. However, it does not preclude the court from taking other overriding mandatory provisions into account as matters of fact, where this is provided for by the national law applicable to the contract. This interpretation is not affected by the principle of sincere cooperation laid down in Article 4(3) TEU.

## ECJ 10 November 2016, case C-548/15 (De Lange), Age discrimination – tax

J.J. de Lange – v – Staatssecretaris van Financiën

### Summary

Tax law may, in principle, allow persons aged under 30 to deduct from their taxable income more vocational training expenses than older persons.

### Facts

The Dutch Income Tax Act allows persons aged between 18 and 30, to deduct the full expense of training from their taxable income provided certain conditions are satisfied. Others may deduct no more than € 15,000.

When he was 32, Mr De Lange started training as a commercial airline pilot. In his 2009 declaration of taxable income he deducted € 44,507, being the full cost of his training. The tax authorities allowed a deduction of no more than € 15,000.

### National proceedings

Mr De Lange appealed unsuccessfully in two instances. He argued that the distinction between individuals under and over 30 violated Article 3(1) of Directive 2000/78, which provides that the Directive applies to all persons in relation to “access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience”. Mr De Lange appealed to the Supreme Court, which referred questions to the ECJ.

The first question was whether a taxation scheme such as the one at issue falls outside the material scope of the Directive. The third and fourth questions were whether Article 6 of the Directive precludes a taxation scheme such as that at issue.

### ECJ's findings

1. While the existence and scope of a right to deduct are not preconditions, as such, for access to vocational training, the resulting financial consequences may affect accessibility to training. According to the Dutch government, the right to deduct training expenses is designed to help young people by offering them tax concessions to make it easier for them to study during that period and gain a firm position on the labour market. In those circumstances, a taxation scheme such as that at issue can be regarded as relating to access to vocational training, within the meaning of Article 3(1)(b) of Directive 2000/78 (§18–20).
2. Article 6(1)(a) of Directive 2000/78 provides that the differences of treatment may include the setting of special conditions for young people on access to employment and vocational training, including dismissal and remuneration conditions, in order to promote their vocational integration or ensure their protection. Consequently, the objective of promoting the position of young people on the labour market can be regarded as legitimate for the purposes of Article 6(1) of Directive 2000/78. It is thus necessary to examine whether the means used to attain that objective are appropriate and necessary (§25–28).
3. As regards the appropriateness of a taxation scheme such as that at issue, it is common ground that such a scheme is capable of improving the position of young people on the labour market as it amounts to an incentive to pursue vocational training. It is, however, for the national court to determine whether that is indeed the case (§29).
4. The Netherlands Government observes that, while this scheme reserves the right to deduct the whole of their training costs from their taxable income solely to those under 30, those over 30 are nonetheless not excessively disadvantaged by that scheme. Persons over 30 enjoy a right each year to deduct training expenditure of up to € 15 000, irrespective of whether the costs incurred concern a first cycle of studies or a further cycle. Moreover, the right may be exercised without any limitation in time, whereas those under can only deduct the whole of their training costs in an ordinary period of study of 16 calendar quarters. In addition, training costs amount to an average of € 15,000 per annum. Finally, as whether it is justified to exclude those over 30 from the right to full deduction of training costs, the government of the Netherlands argued that those over 30 have generally had the opportunity to undertake prior training and to pursue a professional activity, with the result that

they are able to bear the financial burden of new training (§31-33).

5. Although Member States have a broad discretion in the field of social policy and employment, it does not appear that those that adopt a taxation scheme such as that at issue in the main proceedings go beyond what is necessary to attain the objective of promoting the position of young people on the labour market (§34).

## Judgment

1. Article 3(1)(b) of Council Directive 2000/78 must be interpreted as meaning that a taxation scheme, such as that at issue in the main proceedings, which provides that the tax treatment of vocational training costs incurred by a person differs depending on his or her age, comes within the material scope of that Directive to the extent to which the scheme is designed to improve access to training for young people.
2. Article 6(1) of Directive 2000/78 must be interpreted as not precluding a taxation scheme, such as that at issue in the main proceedings, which allows persons who have not yet reached the age of 30 to deduct vocational training costs from their taxable income in full, under certain conditions, whereas the right to deduct is restricted in the case of those who have reached that age, in so far as, first, the scheme is objectively and reasonably justified by a legitimate objective relating to employment and labour market policy and, second, the means of attaining that objective are appropriate and necessary. It is for the national court to determine whether that is the case in the main proceedings.

## ECJ 15 November 2016, case C-258/15 (Salaberria Sorondo), Age discrimination

Gorka Salaberria Sorondo – v – Academia Vasca de Policía y Emergencias

### Summary

Directive 2000/78 does not preclude requiring candidates for the position of police officer to be under 35 years of age. The ECJ distinguishes from its judgment in *Vital Pérez*.

## Facts

Mr Salaberria Sorondo was over 35 years old when he challenged a decision by the Basque Police Academy on the grounds that it violated Directive 2000/78 on age discrimination. The decision required candidates applying for the position of police officer to be under 35.

## National proceedings

The Basque court stated that it had previously held an upper age limit of 32 for the recruitment of police officers to comply with both Spanish law and the Directive. That previous judgment had taken the ECJ's 2010 judgment in the *Wolf* case (C-229/08) into consideration. In that case, the ECJ allowed an age limit of 30 for firemen.

The Basque court also noted that it was aware of the ECJ's 2014 judgment in the *Vital Pérez* case (C-416/13). In that judgment, the ECJ held that Directive 2000/78 precludes national legislation that sets the maximum age for recruitment of local police officers at 30 years. The Basque court was not sure whether that judgment, which dealt with an applicant for a position in a Spanish municipal police force, should be applied to the case of Mr Salaberria Sorondo, who applied for a position in the police force of the Autonomous Basque region, which is an 'integrated' police force, having the duty to ensure the preservation of public order and safety.

## ECJ's findings

1. Article 4(1) of Directive 2000/78 provides that "a difference of treatment based on a characteristic related to any of the grounds referred to in Article 1 [of that directive] shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate". It is not the ground on which the difference in treatment is based but a characteristic related to that ground which must constitute a genuine and determining occupational requirement. The possession of particular physical capacities is one characteristic relating to age (§32-34).
2. The duties relating to the protection of people and property, the arrest and guarding of offenders and preventive patrolling may require the use of physical force. The nature of those duties requires a particular level of physical capability insofar as physical inadequacies in the exercise of those duties may have significant consequences not only for the police officers