

ous salary, does not allow — where the period during which the person concerned was in receipt of a salary in respect of his or her last activity as an employed person pursued under that legislation is shorter than the reference period laid down by that legislation for determining the salary to be used as the basis for calculating unemployment benefits — for account to be taken of the salary received by the person concerned in respect of that activity.

2. Article 62(1) and (2) of Regulation (EC) No 883/2004 must be interpreted as precluding legislation of a Member State which, while providing that the calculation of unemployment benefits is to be based on the amount of the previous salary, does not allow — where the salary received by the person concerned in respect of the last activity pursued as an employed person under that legislation was not calculated or paid until after his or her employment relationship came to an end — for account to be taken of the salary received by the person concerned for that activity.

## ECJ 30 January 2020, case C-395/18 (Tim), Miscellaneous

Tim SpA — Direzione e coordinamento Vivendi SA – v – Consip SpA, Ministero dell'Economia e delle Finanze, Italian case

### Question

Do Directive 2014/24 and the principle of proportionality preclude national legislation under which the contracting authority is required automatically to exclude an economic operator from the contract award procedure where the ground for exclusion referred to in Article 57(4)(a) of that directive is found in respect of one of the subcontractors mentioned in that operator's tender?

### Ruling

Article 57(4)(a) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC does not preclude national legislation under which the contracting authority has the option, or even the obligation, to exclude the economic operator who submitted the tender from participation in the contract award procedure where the ground for exclusion referred to in that provision is established in respect of one of the subcontractors mentioned in that operator's tender. However, that provision, read in conjunction

with Article 57(6) of that directive, and the principle of proportionality preclude national legislation providing for the automatic nature of such an exclusion.

## ECJ 26 February 2020, case C-427/18 P (EEAS), Miscellaneous

European External Action Service (EEAS) – v – Ruben Alba Aguilera and Others, EU case

### Summary

Reduction of allowance for living costs for EEAS staff – ECJ annuls judgment of General Court – case referred back to the General Court.

### Decision

The Court (Ten Chamber):

1. Annuls paragraphs 1 and 3 of the operative part of the judgment of the General Court of the European Union of 13 April 2018, Alba Aguilera and Others v EEAS (T-119/17, EU:T:2018:183).
2. Refers the case back to the General Court of the European Union.
3. Orders that the costs be reserved.

## ECJ 27 February 2020, joined cases C-773/18 – C-775/18 (Land Sachsen- Anhalt), Age Discrimination

TK, UL, VM – v – Land Sachsen-Anhalt, German case

### Summary

General subsequent payment based on salary step not found discriminatory, provided that it protects existing acquired rights and if it does not prolong age discrimination. A summary will be provided on [www.eelc-online.com](http://www.eelc-online.com) once an English translation becomes available. For now, please find the case here:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62018CJ0773>.

## ECJ 5 March 2020, case C-135/19 (Pensionsversicherungsanstalt Prestation pour la rééducation), Social insurance

Pensionsversicherungsanstalt – v – CW, Austrian case

### Summary

Austrian rehabilitation allowance qualifies as a sickness benefit within the meaning of Article 3(1)(a) of Regulation No 883/2004. Denial of that benefit found possible.

### Question

1. Is a benefit such as the rehabilitation allowance at issue in the main proceedings a sickness benefit, an invalidity benefit or an unemployment benefit, within the meaning of Article 3(1)(a), (c) and (h) of Regulation No 883/2004?
2. Must Regulation No 883/2004 be interpreted as precluding a situation, such as that at issue in the main proceedings, in which a person who has ceased to be insured under the social security system of his or her Member State of origin after ceasing to be employed there and moving his or her place of residence to another Member State, where he or she worked and completed the majority of his or her periods of insurance, is refused a benefit such as the rehabilitation allowance at issue in the main proceedings by the competent institution of his or her Member State of origin?

### Ruling

1. A benefit such as the rehabilitation allowance at issue in the main proceedings is a sickness benefit, within the meaning of Article 3(1)(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regula-

tion (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012.

2. Regulation No 883/2004, as amended by Regulation No 465/2012, must be interpreted as not precluding a situation in which a person who has ceased to be insured under the social security system of his or her Member State of origin after ceasing to be employed there and moving his or her place of residence to another Member State, where he or she worked and completed the majority of his or her periods of insurance, is refused a benefit such as the rehabilitation allowance at issue in the main proceedings by the competent institution of his or her Member State of origin, since that person is subject not to the legislation of the State of origin but to that of the Member State in which his or her place of residence is situated.

## ECJ 12 March 2020, case C-769/18) (Caisse d'assurance retraite and de la santé au travail d'Alsace-Moselle), Social insurance

Caisse d'assurance retraite et de la santé au travail d'Alsace-Moselle – v – SJ, Ministre chargé de la Sécurité sociale, French/German case

### Summary

The assistance for integration of mentally disabled children and young people, provided for in the German Social Code does not constitute a benefit within the meaning of Article 3 of Regulation 883/2004 and therefore falls outside its material scope. Moreover, Article 5 precludes that the German provision at issue and the child-rearing allowance for a disabled child provided for in the French Social Security Code cannot be considered issues of an equivalent nature for the purpose of Article 5(a). The principle of equal treatment of facts enshrined in Article 5(b) applies, so that the French authorities must take into account similar facts occurring in Germany as though they had taken place on their own territory.

### Question

1. Must Article 3 of Regulation No 883/2004 be interpreted as meaning that the German assistance con-