



COMMUNIQUÉ

THE FRENCH CONSTITUTIONAL COURT SIDES WITH ORANGE CONCERNING URSSAF'S OBLIGATION TO REFUND THE EMPLOYER CONTRIBUTION ON FREE AWARDS OF SHARES WHEN NONE ARE ACTUALLY AWARDED



Employment and Social Security Law Public Law and Public Procurement Law Environmental Law Private Clients European Law Real Estate and Construction | 28/04/17 | Emmanuelle Barbara Emmanuelle Mignon Hélène Billery Boris Léone-Robin

In 2011, Orange introduced a free share award plan for all of its employees and immediately paid, as was then required by law, the employer's share of the specific social security contribution to which awards of free shares are subject in consideration of the fact that they are not subject to social security contributions under the ordinary rule of law. The performance condition not having been met, Orange did not ultimately award any shares to its employees under that plan.

Urssaf refused Orange's application for the refund of the payment already made. In 2014, the French Supreme Court had ruled that in such case, even though no additional compensation in the form of shares had been paid to employees, the employer contribution remained owed and was not refundable.

A request for preliminary ruling on constitutionality having been referred to it, the French Constitutional Court has just sided with Orange: by its ruling on April 28th, 2017, it held that, while the legislature may require payment of the employer contribution as soon as the formal decision to award the shares is taken, this contribution must be refunded when no share is effectively awarded due to nonfulfillment of the conditions to which this award was subject, otherwise, the principle of the equality of citizens vis-à-vis burdens imposed by the State is violated. This solution applies to all plans to award free shares authorized by decision of extraordinary shareholders' meeting on or before August 7th, 2015 and to all applications for a refund made within the applicable limitation period.

The Constitutional Court's ruling was entered following lengthy proceedings before the Social Security Affairs Tribunal of Strasbourg and the Court of Appeal of Colmar, which had successively rejected the application for a refund of the contribution and refused to refer the associated request for a preliminary ruling on constitutionality. To better its prospects of success, Orange decided not only to contest the refusal to refer its request for a preliminary constitutional ruling before the Supreme Court but also before the Council of State, challenging the legality of the implementing circular reiterating the provisions of the law, and also making the same request for a preliminary constitutional ruling. Within a day of each other, both the Council of State and the Supreme Court decided to pass on the same request for a preliminary ruling on constitutionality to the Constitutional Court, an event in its own right.

In this case, Orange was represented by August Debouzy's public law team (Emmanuelle Mignon, partner, Hélène Billery, counsel, and Emmanuel Weicheldinger, attorney) and employment law team (Emmanuelle Barbara, partner, Isabelle Hado ux-Vallier, counsel, and Camille Lihmann, senior attorney), as well as by SCP Célice-Soltner-TeXidor-Perier.
