

**Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on
29 August 2014 — Dr. Falk Pharma GmbH v DAK-Gesundheit**

(Case C-410/14)

(2014/C 409/41)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Dr. Falk Pharma GmbH

Defendant: DAK-Gesundheit

Questions referred

The following questions are referred to the Court of Justice of the European Union under Article 267 TFEU for a preliminary ruling on the interpretation of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ... ⁽¹⁾:

1. Does the concept of a ‘public contract’ under Article 1(2)(a) of Directive 2004/18/EC no longer apply if a contracting authority carries out an authorisation procedure in which it awards the contract without selecting one or more economic operators (‘openhouse model’)?
2. If the answer to question 1 is that the selection of one or more economic operators is a characteristic of a public contract, the following question arises: is the characteristic of the selection of economic operators within the meaning of Article 1(2)(a) of Directive 2004/18/EC to be interpreted, in the light of Article 2 of that directive, as meaning that contracting authorities may refrain from selecting one or more economic operators by way of an authorisation procedure only if the following conditions are satisfied:
 - the carrying out of an authorisation procedure is published at European level,
 - clear rules concerning the conclusion of the contract and acceding to the contract are set,
 - the terms of the contract are set in advance in such a way that no economic operator is able to influence the content of the contract,
 - economic operators are granted the right to accede to the contract at any time;
 - the contracts concluded are published at European level?

⁽¹⁾ OJ 2004 L 134, p. 114.

**Appeal brought on 25 September 2014 by the Federal Republic of Germany against the judgment of
the General Court (Fifth Chamber) delivered on 16 July 2014 in Case T-295/12 Federal Republic of
Germany v European Commission**

(Case C-446/14 P)

(2014/C 409/42)

Language of the case: German

Parties

Appellant: Federal Republic of Germany (represented by: T. Henze and J. Möller, acting as Agents, Prof. Dr. T. Lübbig and Dr. M. Klasse, Rechtsanwälte)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

1. set aside in full the judgment of the General Court (Fifth Chamber) of 16 July 2014 in Case T-295/12;
2. order the European Commission to pay the costs of the proceedings.

In addition, the form of order sought by the Federal Republic of Germany at first instance is maintained in its entirety.

Pleas in law and main arguments

The subject-matter of this appeal is the judgment of the General Court of 16 July 2014 in Case T-295/12 *Federal Republic of Germany v European Commission*, in which the General Court dismissed the action of the Federal Republic of Germany against the decision of the European Commission of 25 April 2012 on State aid SA.25051 (C 19/2010) (ex NN 23/2010) granted by Germany to the Zweckverband Tierkörperbeseitigung in Rhineland-Palatinate, Saarland, Rheingau-Taunus-Kreis and Landkreis Limburg-Weilburg (Reference: C(2012) 2557 final).

In its appeal the Federal Republic of Germany complains of an incorrect definition of the evidential criteria which the General Court established for the determination of a 'manifest error of assessment' in the event that a Member State defines a service of general economic interest (SGEI) in a sector which is not harmonised under EU law. The (alleged) recipient of the aid in the underlying administrative procedure is the Zweckverband Tierkörperbeseitigung in Rhineland-Palatinate — an establishment which received State compensatory payments for the animal health task of providing animal carcase disposal capacities in the event of an epidemic. Crucial to the issue of the classification of those compensatory payments as aid in the judgment under appeal is essentially the fact that the General Court did not classify the animal health tasks, with which the Zweckverband is entrusted, as SGEI.

The Federal Republic of Germany puts forward three grounds in support of its appeal.

The first ground alleges infringement of Article 107(1) TFEU and Article 106(2) TFEU in so far as those provisions were misinterpreted in the judgment under appeal to the effect that the German authorities had made such serious errors in the classification of the reserve capacity to cope with epidemics as SGEI that those errors must, in the view of the General Court, be classified as 'manifest'. The Federal Republic of Germany argues that the judgment under appeal encroaches upon the margin of discretion which is due to Member States when defining a SGEI. According to the Federal Republic of Germany, there is in any event no 'manifest error of assessment' in the case of the SGEI definition. The Federal Republic of Germany notes (i) that that criterion for assessment is indisputably not mentioned at all by the Commission in the underlying decision, (ii) that the Commission also stated in the proceedings before the General Court that it was not obliged to prove the presence of a 'manifest error of assessment', and (iii) that neither the Commission's considerations in the decision nor the General Court's findings in the judgment under appeal substantively support the alleged presence of a 'manifest error of assessment'.

The second ground alleges infringement of Article 107(1) TFEU owing to the erroneous finding of an economic advantage on the basis of an erroneous assessment of the 'Altmark criteria'. ⁽¹⁾ The Federal Republic of Germany argues, inter alia, that the General Court committed errors when assessing the third Altmark criterion (necessity of the compensatory payments). The General Court failed to recognise that the Commission erred in law in failing to assess whether the compensatory payments for the reserve capacity to cope with epidemics exceed the net additional costs of the provision of that reserve capacity. Instead, the Commission and, following it, the General Court rejected out of hand the necessity for such costs by referring to an alleged lack of need for a separate reserve capacity to cope with epidemics.

The third ground alleges failure to state adequate reasons in the judgment under appeal, particularly in that alleged errors made by the German authorities must be classified as particularly serious and 'manifest'. It is also not explained why the view of the German authorities is indefensible from any conceivable point of view.

⁽¹⁾ Judgment in *Altmark*, C-280/00, EU:C:2003:415.

Order of the President of the Court of 18 August 2014 — European Commission v Republic of Estonia supported by: Federal Republic of Germany, Kingdom of Belgium, Kingdom of the Netherlands, United Kingdom of Great Britain and Northern Ireland, Republic of Poland, Republic of Finland, Kingdom of Sweden

(Case C-240/13) ⁽¹⁾

(2014/C 409/43)

Language of the case: Estonian

The President of the Court has ordered that the case be removed from the register.

⁽¹⁾ OJ C 189, 29.6.2013.

Order of the President of the Court of 18 August 2014 — European Commission v Republic of Estonia supported by: Federal Republic of Germany, Kingdom of Belgium, Kingdom of the Netherlands, United Kingdom of Great Britain and Northern Ireland, Republic of Poland, Republic of Finland, Kingdom of Sweden

(Case C-241/13) ⁽¹⁾

(2014/C 409/44)

Language of the case: Estonian

The President of the Court has ordered that the case be removed from the register.

⁽¹⁾ OJ C 189, 29.6.2013.

Order of the President of the Court of 8 July 2014 (request for a preliminary ruling from the Amtsgericht Rüsselsheim — Germany) — Peggy Kieck v Condor Flugdienst GmbH

(Case C-118/14) ⁽¹⁾

(2014/C 409/45)

Language of the case: German

The President of the Court has ordered that the case be removed from the register.

⁽¹⁾ OJ C 184, 16.6.2014.
