

2. If the first question is to be answered in the negative and, with regard to the air pollution it is not necessary to remedy the environmental damage, may a fine aimed at protecting air quality be imposed on the basis of legislation of the Member State which is more stringent than Article 16 of Directive 2004/35/EC and Article 193 TFEU, or can that more stringent legislation not, at any rate, result in the imposition of a fine which is solely punitive in nature on the owner of the property, which is not responsible for the pollution caused?

---

(<sup>1</sup>) Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56).

---

**Request for a preliminary ruling from the Krajowa Izba Odwoławcza (Poland) lodged on 1 March 2016 — Archus sp. z o.o., Gama Jacek Lipik v Polskie Górnictwo Naftowe i Gazownictwo S.A.**

**(Case C-131/16)**

**(2016/C 211/33)**

*Language of the case: Polish*

**Referring court**

Krajowa Izba Odwoławcza

**Parties to the main proceedings**

*Applicants:* Archus sp. z o.o., Gama Jacek Lipik

*Defendant:* Polskie Górnictwo Naftowe i Gazownictwo S.A.

**Questions referred**

1. Can Article 10 of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (<sup>1</sup>) be interpreted as meaning that the contracting authority can be required to invite economic operators which have not submitted within the prescribed period (that is to say, the period specified for submitting tenders) 'declarations or documents' requested by the contractor proving that the tendered supplies, services or works satisfy the requirements laid down by the contracting authority (that term also covering samples of the subject-matter of the contract), or which submitted 'declarations or documents' requested by the contracting authority containing errors, to submit 'declarations or documents' (samples) which are missing or which correct errors within a specified additional period, without laying down a prohibition under which supplemented 'declarations or documents' (samples) cannot alter the content of the tender?
2. Can Article 10 of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors be interpreted as meaning that the contracting authority can retain the deposit lodged by the economic operator if that operator, in response to the contracting authority's invitation to supplement the tender, did not submit 'documents or declarations' (samples) proving that the tendered supplies, services or works satisfy the requirements laid down by the contracting authority, where that supplementation would result in a change to the content of the tender, or did not consent to the contracting authority's correction of the tender, which made it impossible to select the tender submitted by the economic operator as being the most advantageous?

3. Must Article 1(3) of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts, be interpreted as meaning that ‘a particular contract’, as referred to in the passage concerning the ‘interest in obtaining a particular contract’, means ‘a particular procedure for the award of a public contract carried out’ (in this case: that published in the notice of 3 June 2015), or ‘the particular subject-matter of the contract’ (in this case: the service relating to the digitisation of the contracting authority’s archive documents), irrespective of whether, as a consequence of an appeal being granted, the contracting authority will be required to annul the procedure for the award of a public contract and may possibly be required to initiate a subsequent procedure for the award of a public contract?

---

(<sup>1</sup>) OJ 2004 L 134, p. 1.

---

**Request for a preliminary ruling from the Verwaltungsgericht Frankfurt am Main (Germany) lodged on 7 March 2016 — Georgsmarienhütte GmbH and Others v Bundesrepublik Deutschland**

(Case C-135/16)

(2016/C 211/34)

*Language of the case: German*

**Referring court**

Verwaltungsgericht Frankfurt am Main

**Parties to the main proceedings**

*Applicants:* Georgsmarienhütte GmbH, Stahlwerk Bous GmbH, Schmiedag GmbH, Harz Guss Zorge GmbH

*Defendants:* Bundesrepublik Deutschland

**Question referred**

Does the European Commission Decision of 25 November 2014 (Commission Decision of 25.11.2014 on the aid scheme SA.33995 (2013/C) (ex 2013/NN) implemented by Germany for the support of renewable electricity and of energy-intensive users, C(2014)8786 final) (<sup>1</sup>) breach the Treaty on the Functioning of the European Union in so far as the Commission qualifies the limitation of the EEG-surcharge as aid within the meaning of Article 107 TFEU?

---

(<sup>1</sup>) OJ 2015 L 250, p. 122.

---

**Request for a preliminary ruling from the Tribunal Judicial da Comarca de Setúbal (Portugal) lodged on 14 March 2016 — Município de Palmela v ASAE -Divisão de Gestão de Contraordenações**

(Case C-144/16)

(2016/C 211/35)

*Language of the case: Portuguese*

**Referring court**

Tribunal Judicial da Comarca de Setúbal