

precluding undertakings which are linked or controlled from participating individually in public procurement procedures for the supply of services

Operative part of the judgment

1. The first paragraph of Article 29 of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts must be interpreted as not precluding a Member State from laying down, in addition to the grounds for exclusion contained in that provision, other grounds for exclusion intended to guarantee respect for the principles of equality of treatment and transparency, provided that such measures do not go beyond what is necessary to achieve that objective.
2. Community law precludes a national provision which, while pursuing legitimate objectives of equality of treatment of tenderers and transparency in procedures for the award of public contracts, lays down an absolute prohibition on simultaneous and competing participation in the same tendering procedure by undertakings linked by a relationship of control, without allowing them an opportunity to demonstrate that that relationship did not influence their conduct in the course of that tendering procedure.

⁽¹⁾ OJ C 37, 9.2.2008.

Judgment of the Court (Third Chamber) of 7 May 2009 (reference for a preliminary ruling from the Raad van State (Netherlands)) — College van burgemeester en wethouders van Rotterdam v M.E.E. Rijkeboer

(Case C-553/07) ⁽¹⁾

(Protection of individuals with regard to the processing of personal data — Directive 95/46/EC — Respect for private life — Erasure of data — Right of access to data and to information on the recipients of data — Time-limit on the exercise of the right to access)

(2009/C 153/19)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: College van burgemeester en wethouders van Rotterdam

Defendant: M.E.E. Rijkeboer

Re:

Preliminary ruling — Raad van State (Netherlands) — Interpretation of Articles 6(1)(e) and 12(a) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of

personal data and on the free movement of such data (OJ 1995 L 281, p. 31) — National legislation limiting the right of access to data processed during the year prior to the request for access — Principle of proportionality

Operative part of the judgment

1. Article 12(a) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data requires Member States to ensure a right of access to information on the recipients or categories of recipient of personal data and on the content of the data disclosed not only in respect of the present but also in respect of the past. It is for Member States to fix a time-limit for storage of that information and to provide for access to that information which constitutes a fair balance between, on the one hand, the interest of the data subject in protecting his privacy, in particular by way of his rights to object and to bring legal proceedings and, on the other, the burden which the obligation to store that information represents for the controller.
2. Rules limiting the storage of information on the recipients or categories of recipient of personal data and on the content of the data disclosed to a period of one year and correspondingly limiting access to that information, while basic data is stored for a much longer period, do not constitute a fair balance of the interest and obligation at issue, unless it can be shown that longer storage of that information would constitute an excessive burden on the controller. It is, however, for national courts to make the determinations necessary.

⁽¹⁾ OJ C 64, 8.3.2008.

Judgment of the Court (Fifth Chamber) of 30 April 2009 (reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany)) — BIOS Naturprodukte GmbH v Saarland

(Case C-27/08) ⁽¹⁾

(Directive 2001/83/EC — Article 1(2)(b) — Concept of ‘medicinal product by function’ — Dosage of the product — Normal conditions of use — Risk to health — Ability to restore, correct or modify physiological functions in human beings)

(2009/C 153/20)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: BIOS Naturprodukte GmbH

Defendant: Saarland

Re:

Reference for a preliminary ruling — Bundesverwaltungsgericht — Interpretation of Article 1(2) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67), as amended by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use (OJ 2004 L 136, p. 34) — Definition of medicinal product — Product containing a substance having a therapeutic effect in high doses, while capable of being harmful in lower doses, like the dose recommended by the manufacturer — Boswellia extract

Operative part of the judgment

Article 1(2) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004, must be interpreted as meaning that a product which includes in its composition a substance which has a physiological effect when used in a particular dosage is not a medicinal product by function where, having regard to its content in active substances and under normal conditions of use, it constitutes a risk to health without, however, being capable of restoring, correcting or modifying physiological functions in human beings.

(¹) OJ C 92, 12.4.2008.

Judgment of the Court (First Chamber) of 14 May 2009 (reference for a preliminary ruling from the Tribunale ordinario di Padova (Italy)) — Azienda Agricola Disarò Antonio and Others v Cooperativa Milka 2000 Soc. coop. arl

(Case C-34/08) (¹)

(Agriculture — Common organisation of the markets — Milk quotas — Levy — Validity of Regulation (EC) No 1788/2003 — Objectives of the common agricultural policy — Principles of non-discrimination and proportionality — Determination of the national reference quantity — Criteria — Relevance of the criterion of a Member State's milk production deficit)

(2009/C 153/21)

Language of the case: Italian

Referring court

Tribunale ordinario di Padova

Parties to the main proceedings

Applicant: Azienda Agricola Disarò Antonio and Others

Defendant: Cooperativa Milka 2000 Soc. coop. arl

Re:

Reference for a preliminary ruling — Tribunale ordinario di Padova — Interpretation and validity of Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector (OJ 2003 L 270, p.123) — Regulation under which (i) no account is taken of the periodic updating for each country of the reference quantities exempt from the levy and (ii) the additional levy is applied in an identical manner to producers with surplus milk production and to those in deficit — Incompatibility with Articles 5, 32, 33 et 34 EC

Operative part of the judgment

1. The fact that Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector does not take into account, for the purposes of determining the national reference quantity, the fact that the Member State concerned has a milk production deficit is not capable of affecting the compatibility of that regulation with the objectives laid down, in particular, in Article 33(1)(a) and (b) EC.
2. The analysis of Regulation No 1788/2003 in the light of the principle of non-discrimination has not disclosed any factor which might affect the validity of that regulation.
3. The analysis of Regulation No 1788/2003 in the light of the principle of proportionality has not disclosed any factor which might affect the validity of that regulation.

(¹) OJ C 92, 12.4.2008.

Judgment of the Court (Second Chamber) of 30 April 2009 (reference for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division) (United Kingdom)) — The Queen on the application of Christopher Mellor v Secretary of State for Communities and Local Government

(Case C-75/08) (¹)

(Directive 85/337/EEC — Assessment of the effects of projects on the environment — Obligation to make public the reasons for a determination not to make a project subject to an assessment)

(2009/C 153/22)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicant: The Queen on the application of Christopher Mellor

Defendant: Secretary of State for Communities and Local Government