

## JUDGMENT OF THE COURT

(First Chamber)

of 11 January 2005

**in Case C-26/03 (reference for a preliminary ruling from the Oberlandesgericht Naumburg): Stadt Halle, RPL Recyclingpark Lochau GmbH v Arbeitsgemeinschaft Thermische Restabfall- und Energieverwertungsanlage TREA Leuna <sup>(1)</sup>**

**(Directive 92/50/EEC — Public service contracts — Award with no public call for tenders — Award of the contract to a semi-public undertaking — Judicial protection — Directive 89/665/EEC)**

(2005/C 57/10)

(Language of the case: German)

In Case C-26/03: reference for a preliminary ruling under Article 234 EC from the Oberlandesgericht Naumburg (Higher Regional Court, Naumburg, Germany), made by decision of 8 January 2003, received at the Court on 23 January 2003, in the proceedings between Stadt Halle, RPL Recyclingpark Lochau GmbH and Arbeitsgemeinschaft Thermische Restabfall- und Energieverwertungsanlage TREA Leuna — the Court (First Chamber), composed of P. Jann, President of the Chamber, J.N. Cunha Rodrigues, E. Juhász (Rapporteur), M. Ilešič and E. Levits, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 11 January 2005, in which it has ruled:

1. Article 1(1) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, itself amended by European Parliament and Council Directive 97/52/EC of 13 October 1997, must be interpreted as meaning that the obligation of the Member States to ensure that effective and rapid remedies are available against decisions taken by contracting authorities extends also to decisions taken outside a formal award procedure and decisions prior to a formal call for tenders, in particular the decision on whether a particular contract falls within the personal and material scope of Directive 92/50, as amended. That possibility of review is available to any person having or having had an interest in obtaining the contract in question who has been or risks being harmed by an

alleged infringement, from the time when the contracting authority has expressed its will in a manner capable of producing legal effects. The Member States are not therefore authorised to make the possibility of review subject to the fact that the public procurement procedure in question has formally reached a particular stage.

2. Where a contracting authority intends to conclude a contract for pecuniary interest relating to services within the material scope of Directive 92/50, as amended by Directive 97/52, with a company legally distinct from it, in whose capital it has a holding together with one or more private undertakings, the public award procedures laid down by that directive must always be applied.

<sup>(1)</sup> OJ C 101 of 26.04.2003.

## JUDGMENT OF THE COURT

(Sixth Chamber)

of 13 January 2005

**in Case C-38/03: Commission of the European Communities v Kingdom of Belgium <sup>(1)</sup>**

**(Failure of a Member State to fulfil its obligations — Article 28 EC — Measures having equivalent effect — Wheelchairs — Admission to the reimbursement system under the social security scheme)**

(2005/C 57/11)

(Language of the case: French)

In Case C-38/03: **Commission of the European Communities** (Agents: L. Ström and F. Simonetti) v **Kingdom of Belgium** (Agent: initially A. Snoecx, then E. Dominkovits) supported by **Kingdom of Spain** (Agent: L. Fraguas Gadea) — ACTION under Article 226 EC for failure to fulfil obligations, brought on 3 February 2003 — the Court (Sixth Chamber), composed of: A. Borg Barthet, President of Chamber, J.-P. Puissochet and S. von Bahr (Rapporteur), Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, gave a judgment on 13 January 2005, in which it:

1. Declares that,

- by laying down the technical criteria to be met by wheelchairs in order to be eligible for reimbursement by social security in such a way as to exclude from the list of reimbursable wheelchairs those bearing EC markings but which do not meet the relevant criteria, namely, as regards the diameter of the front and rear wheels, the cover and filling of the seat and back, the dimensions of the flat sections and crossbars, head rests and/or foot or leg rests;
- by laying down more general criteria which the economic operator must meet in order to be included on the list of reimbursable wheelchairs, namely special conditions for manual wheelchairs, as well as special conditions for power wheelchairs according to which such wheelchairs must be available in a minimum number of seat sizes;
- by being too rigid in its updating of the list of equipment admitted to the reimbursement scheme,

the Kingdom of Belgium has failed to fulfil its obligations under Article 28 EC.

2. Orders the Kingdom of Belgium to pay the costs.

3. Orders the Kingdom of Spain to bear its own costs.

(<sup>(1)</sup>) OJ C 70, 22.03.2003.

## JUDGMENT OF THE COURT

(Second Chamber)

of 20 January 2005

**in Case 74/03 (reference for a preliminary ruling by the Østre Landsret): SmithKline Beecham plc v Lægemiddelstyrelsen** (<sup>(1)</sup>)

**(Medicinal products — Marketing authorisation — Abridged procedure — Essentially similar products — Active substance in different forms of salt — Additional documentation)**

(2005/C 57/12)

(Language of the case: Danish)

In Case 74/03: reference for a preliminary ruling under Article 234 EC by the Østre Landsret (Denmark), made by decision of 14 February 2003, received at the Court on 19 February 2003, in the proceedings between SmithKline Beecham plc and Lægemiddelstyrelsen, interveners: Synthon BV and Genthon BV – the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), J.-P. Puissechot, N. Colneric and J.N. Cunha Rodrigues, Judges; F.G. Jacobs, Advocate General; M. Múgica Arzamendi, Principal

Administrator, for the Registrar, has given a judgment on 20 January 2005, in which it has ruled:

1. Article 4.8(a)(iii) of Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products, as amended by Council Directives 87/21/EEC of 22 December 1986, 89/341/EEC of 3 May 1989 and 93/39/EEC of 14 June 1993, must be interpreted as not preventing an application for marketing authorisation in respect of a medicinal product from being handled under the abridged procedure under that provision where that product contains the same therapeutic moiety as the reference product but combined with another salt.
2. In support of an application under Article 4.8(a)(iii) of Directive 65/65 as amended, an applicant may, either spontaneously or at the request of the competent authority of a Member State, supply additional documentation in the form of certain pharmacological and toxicological tests or clinical trials in order to demonstrate that his product is essentially similar to the reference product.

(<sup>(1)</sup>) OJ C 101 of 26.04.2003.

## JUDGMENT OF THE COURT

(Second Chamber)

of 13 January 2005

**in Case C-117/03 (reference for a preliminary ruling from the Consiglio di Stato): Società Italiana Dragaggi SpA and Others v Ministero delle Infrastrutture e dei Trasporti and Regione Autonoma del Friuli Venezia Giulia** (<sup>(1)</sup>)

**(Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — National list of sites eligible for identification as sites of Community importance — Conservation measures)**

(2005/C 57/13)

(Language of the case: Italian)

In Case C-117/03: reference for a preliminary ruling under Article 234 EC from the Consiglio di Stato (Italy), made by order of 17 December 2002, received at the Court on 18 March 2003, in the proceedings between **Società Italiana Dragaggi SpA and Others v Ministero delle Infrastrutture e dei Trasporti and Regione Autonoma del Friuli Venezia Giulia** – the Court (Second Chamber) composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), J.-P. Puissechot, N. Colneric and J.N. Cunha Rodrigues, Judges; J. Kokott, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 13 January 2005, the operative part of which is as follows: