

7. Must the provisions of Article 1 of Directive 2008/48, in accordance with which the directive aims at full harmonisation in the field concerned, or Article 23 of the directive, in accordance with which penalties must be proportionate, be interpreted as precluding a provision of national law under which the absence of most of the elements of a credit agreement required by Article 10(2) of the directive has the consequence that the credit granted is regarded as interest-free and free of charges, so that the debtor is obliged to repay the creditor solely the capital sum which he received under the agreement?

Request for a preliminary ruling from the Oberlandesgericht Celle (Germany) lodged on 6 February 2015 — Remondis GmbH & Co. KG Region Nord v Region Hannover

(Case C-51/15)

(2015/C 155/11)

Language of the case: German

Referring court

Oberlandesgericht Celle

Parties to the main proceedings

Applicant and appellant: Remondis GmbH & Co. KG Region Nord

Defendant and respondent: Region Hannover

Intervener: Zweckverband Abfallwirtschaft Region Hannover

Questions referred

1. Does an agreement between two regional authorities — on the basis of which the regional authorities form, by constituent statutes, a common special-purpose association with separate legal personality, which from that point on carries out, under its own responsibility, certain duties which hitherto were incumbent on the regional authorities concerned — constitute a ‘public contract’ within the meaning of Article 1(2)(a) 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⁾ in the case where that transfer of duties concerns services within the meaning of that directive and is effected for consideration, the special-purpose association carries out activities going beyond the ambit of the exercise of duties previously incumbent on the regional authorities concerned and the transfer of duties does not belong to ‘the two types of contracts’ which, although entered into by public entities, do not, according to the case-law of the Court of Justice (most recently, judgment in *Piepenbrock*, C-386/11,⁽²⁾ paragraph 33 et seq.), come within the scope of European Union public procurement law?
2. If the answer to Question 1 is in the affirmative: Does the question whether the creation of a special-purpose association and the related transfer of duties to that association exceptionally does not come within the scope of European Union public procurement law depend on the principles which the Court of Justice has developed with regard to contracts concluded by a public entity with a person legally distinct from that entity — principles in accordance with which an application of European Union public procurement law is excluded — in the case where, at the same time, that entity exercises over the person concerned a control which is similar to that which it exercises over its own departments and where that person carries out the essential part of its activities with the entity or with the entities which control it (see, to that effect, inter alia, judgment in *Teckal*, C-107/98,⁽³⁾ paragraph 50), or, by contrast, do the principles which the Court of Justice has developed concerning contracts which establish cooperation between public entities with the aim of ensuring that a public task that they all have to perform is carried out apply (in that respect, judgment in *Ordine degli Ingegneri della Provincia di Lecce and Others*, C-159/11,⁽⁴⁾ paragraphs 34 and 35)?

⁽¹⁾ OJ 2004 L 134, p. 114.

⁽²⁾ ECLI:EU:C:2013:385.

⁽³⁾ ECLI:EU:C:1999:562.

⁽⁴⁾ ECLI:EU:C:2012:817.