

3. Reserves the costs;

4. Orders the Federal Republic of Germany, Ireland and the Kingdom of Spain to bear their own costs.

⁽¹⁾ OJ C 81, 9.3.2015.

Judgment of the Court (Third Chamber) of 21 December 2016 (request for a preliminary ruling from the Oberlandesgericht Celle — Germany) — Remondis GmbH & Co. KG Region Nord v Region Hannover

(Case C-51/15) ⁽¹⁾

(References for a preliminary ruling — Article 4(2) TEU — Respect for the national identity of Member States inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government — Internal organisation of the Member States — Regional authorities — Legal instrument creating a new public-law entity and organising the transfer of powers and responsibilities for the performance of public tasks — Public procurement — Directive 2004/18/EC — Article 1(2)(a) — Concept of ‘public contract’)

(2017/C 053/06)

Language of the case: German

Referring court

Oberlandesgericht Celle

Parties to the main proceedings

Applicant: Remondis GmbH & Co. KG Region Nord

Defendant: Region Hannover

Intervening parties: Zweckverband Abfallwirtschaft Region Hannover

Operative part of the judgment

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 must be interpreted as meaning that an agreement concluded by two regional authorities, such as that at issue in the main proceedings, on the basis of which they adopt constituent statutes forming a special-purpose association with legal personality governed by public law and transfer to that new public entity certain competences previously held by those authorities and henceforth belonging to that special-purpose association, does not constitute a ‘public contract’.

However, such a transfer of competences concerning the performance of public tasks exists only if it concerns both the responsibilities associated with the transferred competence and the powers that are the corollary thereof, so that the newly competent public authority has decision-making and financial autonomy, which it is for the referring court to verify.

⁽¹⁾ OJ C 155, 11.5.2015.
