

3. If the second question is answered in the affirmative:

Do the rules of EU law governing the award of public contracts preclude national legislation under which the setting-aside of an invitation to tender, as provided for in Article 2(1)(b) of Directive 89/665/EEC, ⁽²⁾ on the ground that it is unlawful by reason of the failure to publish information in accordance with Article 7(2) of Regulation No 1370/2007, may be dispensed with if that illegality does not have a significant influence on the outcome of the procurement procedure because the operator concerned was able to react in a timely manner and there was no adverse effect on competition?

⁽¹⁾ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ 2007 L 315, p. 1.

⁽²⁾ 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, OJ 1989 L 395, p. 33.

Action brought on 27 September 2017 — European Commission v Kingdom of Spain

(Case C-569/17)

(2017/C 392/22)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: T. Scharf, G. von Rintelen and I. Galindo Martín, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

The applicant claims that the Court should:

- declare that by failing to adopt before 21 March 2016 the laws, regulations and administrative provisions necessary to comply with Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 ⁽¹⁾ or, in any event, by failing to notify the Commission of those provisions, the Kingdom of Spain has failed to fulfil its obligations under Article 42(1) of Directive 2014/17/EU;
- order the Kingdom of Spain, in accordance with Article 260(3) TFEU, to pay a daily penalty payment of EUR 105 991,60, with effect from the date of delivery of the judgment establishing its failure to fulfil its obligation to adopt or, in any event, to notify the Commission of the provisions necessary to comply with Directive 2014/17/EU;
- order the Kingdom of Spain to pay the costs of the proceedings.

Pleas in law and main arguments

1. The Member States were required, under Article 42(2) of Directive 2014/17/EU, to adopt the national measures necessary to transpose the obligations under Directive 2014/17/EU by 21 March 2016. As the Kingdom of Spain has not given notification of the transposition of the directive, the Commission decided to refer the matter to the Court of Justice.

2. In its application, the Commission proposes that the Court of Justice impose a daily penalty payment of EUR 105 991,60 on the Kingdom of Spain. The amount of that penalty payment having been calculated taking into account the gravity and duration of the infringement and the deterrent effect based on that Member State's ability to pay.

(¹) OJ 2014, L 60, p. 34.