

Joined Cases 27 to 29/86

SA Constructions et entreprises industrielles (CEI) and Others

v

Société coopérative 'Association intercommunale pour les autoroutes des Ardennes' and Others

(references for a preliminary ruling
from the Conseil d'Etat, Belgium)

(Procedure for the award of public works contracts —
Determination of the constructor's financial
and economic standing)

Report for the Hearing	3348
Opinion of Mr Advocate General Mischo delivered on 11 June 1987	3359
Judgment of the Court (Sixth Chamber), 9 July 1987	3368

Summary of the Judgment

- 1. Approximation of laws — Procedures for the award of public works contracts — Tenderer's financial and economic standing — References required — Member States' discretion — Fixing of maximum value of the works which may be carried out at one time — Permissible
(Council Directive 71/305, Art. 25)*
- 2. Approximation of laws — Procedures for the award of public works contracts — Tenderer's financial and economic standing — Level required — Member States' discretion — Recognition in a Member State — Probative value in regard to an awarding authority in another Member State — Limits
(Council Directive 71/305, Arts 25, 26 and 28)*

1. The references enabling a contractor's financial and economic standing to be determined are not exhaustively enumerated in Article 25 of Council Directive 71/305 concerning the coordination of procedures for the award of public works contracts.

A statement of the total value of the works awarded to a contractor may be required from tenderers as a reference within the meaning of the said Article 25 and neither that article nor any other provision of the directive precludes a Member State from fixing the value of the works which may be carried out at one time.
2. Articles 25, 26 and 28 of Directive 71/305 must be interpreted as not precluding an awarding authority from requiring a contractor recognized in another Member State to furnish proof that his undertaking has the financial and economic standing and technical capacity required by national law even when the contractor is recognized in the Member State in which he is established in a class equivalent to that required by the national law by virtue of the value of the contract to be awarded unless the classification of undertakings in both Member States concerned is based on equivalent criteria in regard to the capacities required.

REPORT FOR THE HEARING
delivered in Joined Cases 27 to 29/86 *

I — Legal background

1. *Community law*

Directive 71/305/EEC of 26 July 1971, in conjunction with Directive 71/304/EEC, lays down provisions directed to the attainment of freedom of establishment and freedom to provide services in respect of public works contracts awarded in Member States on behalf of the State, or regional or local authorities or other legal persons governed by public law, including provisions not only for the abolition of restrictions but also for the coordination of national

procedures for the award of public works contracts.

The questions raised in these cases relate to the interpretation of the provisions of Directive 71/305 dealing with the requirements which undertakings must satisfy in order to take part in tendering procedures, which are contained in Title IV entitled 'Common rules on participation'.

The relevant provisions of Directive 71/305 are as follows:

Article 23 enumerates the criteria relating to contractors which may lead to their

* Language of the Case: French.