

# Case C-220/05

**Jean Auroux and Others**

**v**

**Commune de Roanne**

(Reference for a preliminary ruling  
from the Tribunal administratif de Lyon)

(Public procurement — Directive 93/37/EEC — Award without call for tenders —  
Contract for the implementation of a development project concluded between two  
contracting authorities — Definition of ‘public works contract’ and ‘work’ —  
Method of calculation of the value of the contract)

Opinion of Advocate General Kokott delivered on 15 June 2006 . . . . . I - 387  
Judgment of the Court (First Chamber), 18 January 2007 . . . . . I - 412

## Summary of the Judgment

1. *Approximation of laws — Procedure for the award of public works contracts — Directive 93/37 — Public works contracts — Concept (Council Directive 93/37, Art. 1(a))*

2. *Approximation of laws — Procedure for the award of public works contracts — Directive 93/37 — Scope*

(Council Directive 93/37, Art. 6)

3. *Approximation of laws — Procedure for the award of public works contracts — Directive 93/37 — Scope*

(Council Directive 93/37, Art. 1(a))

1. An agreement by which a first contracting authority entrusts a second contracting authority with the execution of a work constitutes a public works contract within the meaning of Article 1(a) of Directive 93/37 concerning the coordination of procedures for the award of public works contracts, whether or not it is anticipated that the first contracting authority is or will become the owner of all or part of that work.

(see para. 47, operative part 1)

2. In order to determine the value of a contract for the purpose of Article 6 of Directive 93/37 concerning the coordination of procedures for the award of public works contracts, account must be taken of the total value of the works contract from the point of view of a

potential tenderer, including not only the total amounts to be paid by the contracting authority but also all the revenue received from third parties.

(see para. 57, operative part 2)

3. A contracting authority is not exempt from using the procedures for the award of public works contracts laid down in Directive 93/37 concerning the coordination of procedures for the award of public works contracts on the ground that, in accordance with national law, the agreement may be concluded only with certain legal persons, which themselves have the capacity of contracting authority and which will be obliged, in turn, to apply those procedures to the award of any subsequent contracts.

(see para. 68, operative part 3)