

Judgment of the Court (Fourth Chamber) of 15 October 2009 (reference for a preliminary ruling from the Fővárosi Ítéltábla (Republic of Hungary)) — Hochtief AG, Linde-Kca-Dresden GmbH v Közbizottság Tanácsa Közbizottsági Döntőbizottság

(Case C-138/08) ⁽¹⁾

(Procedures for the award of public works contracts — Procedures initiated after the entry into force of Directive 2004/18/EC and before the expiry of the period for transposition of that directive — Negotiated procedures with publication of a contract notice — Obligation to admit a minimum number of suitable candidates — Obligation to ensure genuine competition)

(2009/C 297/06)

Language of the case: Hungarian

Referring court

Fővárosi Ítéltábla

Parties to the main proceedings

Applicant: Hochtief AG, Linde-Kca-Dresden GmbH

Defendant: Közbizottság Tanácsa Közbizottsági Döntőbizottság

Intervening party: Budapest Főváros Önkormányzata

Re:

Reference for a preliminary ruling — Fővárosi Ítéltábla — Interpretation of Article 22(2) and (3) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54), and of Article 44(3) 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 (OJ 2004 L 134, p. 114) — Whether it is possible to continue a negotiated procedure with publication of a contract notice where the number of suitable candidates is less than the minimum number of the range prescribed in the contract notice, and less than the minimum number prescribed for that purpose in the abovementioned directives

Operative part of the judgment

1. 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 is not applicable to a decision taken by a contracting authority when awarding a public works contract before the period for transposition of that directive has expired;
2. Article 22(3) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, as amended by Directive 97/52/EC of the

European Parliament and of the Council of 13 October 1997, must be interpreted as meaning that where a contract is awarded by a negotiated procedure and the number of suitable candidates is below the lower limit prescribed for the procedure in question, the contracting authority may, nevertheless, continue with the procedure by inviting the suitable candidate or candidates to negotiate the terms of that contract;

3. Council Directive 93/37, as amended by Directive 97/52, must be interpreted as meaning that the obligation to ensure that there is genuine competition is satisfied where the contracting authority has recourse to the negotiated procedure under the conditions referred to in Article 7(2) of that directive.

⁽¹⁾ OJ C 183, 19.07.2008.

Judgment of the Court (Third Chamber) of 15 October 2009 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Sicilia (Italy)) — Acoset SpA v Conferenza Sindaci e Presidenza Prov. Reg. ATO Idrico Ragusa, Comune di Comiso (RG), Comune di Modica (RG), Provincia Regionale di Ragusa, Comune di Acate (RG), Comune di Chiaramonte Gulfi (RG), Comune di Giarratana (RG), Comune di Ispica (RG), Comune di Monterosso Almo (RG), Comune di Pozzallo (RG), Comune di Ragusa, Comune di Vittoria (RG), Comune di Santa Croce Camerina (RG), Comune di Scicli (RG)

(Case C-196/08) ⁽¹⁾

(Articles 43 EC, 49 EC and 86 EC — Award of public contracts — Award of water service to a semi-private company — Competitive procedure — Appointment of the private partner responsible for operating the service — Award made without regard to the rules governing the award of public contracts)

(2009/C 297/07)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Sicilia

Parties to the main proceedings

Applicant: Acoset SpA

Defendants: Conferenza Sindaci e Presidenza Prov. Reg. ATO Idrico Ragusa, Comune di Comiso (RG), Comune di Modica (RG), Provincia Regionale di Ragusa, Comune di Acate (RG), Comune di Chiaramonte Gulfi (RG), Comune di Giarratana (RG), Comune di Ispica (RG), Comune di Monterosso Almo (RG), Comune di Pozzallo (RG), Comune di Ragusa, Comune di Vittoria (RG), Comune di Santa Croce Camerina (RG), Comune di Scicli (RG)

Intervening party: Saceccav Depurazioni Sacede SpA

Re:

Reference for a preliminary ruling — Tribunale Amministrativo Regionale per la Sicilia — Interpretation of Articles 43 EC, 49 EC and 86 EC — Award of water service to a semi-private company appointing, in accordance with a competitive procedure, a private partner to be responsible for operating the service — Award made without regard to the rules governing the award of public contracts

Operative part of the judgment

Articles 43 EC, 49 EC and 86 EC do not preclude the direct award of a public service which entails the prior execution of certain works, such as that at issue in the main proceedings, to a semi-public company formed specifically for the purpose of providing that service and possessing a single corporate purpose, the private participant in the company being selected by means of a public and open procedure after verification of the financial, technical, operational and management requirements specific to the service to be performed and of the characteristics of the tender with regard to the service to be delivered, provided that the tendering procedure in question is consistent with the principles of free competition, transparency and equal treatment laid down by the EC Treaty with regard to concessions.

⁽¹⁾ OJ C 197, 2.8.2008.

Judgment of the Court (Seventh Chamber) of 15 October 2009 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-232/08) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Regulation (EC) No 850/1998 — Article 29(2) — Restrictions on fishing for plaice — Maximum engine power of fishing vessels — Regulation (EEC) No 2847/93 — Article 2(1) — Regulation (EC) No 2371/2002 — Article 23 — Control, and enforcement of the rules)

(2009/C 297/08)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: T. van Rijn and K. Banks, Agents)

Defendant: Kingdom of the Netherlands (represented by: M. de Grave and C. Wissels, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 29(2) of Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of

marine organisms, Article 23 of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy and Article 2(1) of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy — Fishing for plaice — Inspection and control of fishing vessels and their activities — Responsibility of the Member States

Operative part of the judgment

The Court:

1. Declares that, by allowing fishing vessels to have a higher engine power than permitted under Article 29(2) of Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms, as amended by Council Regulation (EC) No 2166/2005 of 20 December 2005, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 23 of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy and Article 2(1) of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy, as amended by Council Regulation (EC) No 768/2005 of 26 April 2005;

2. orders the Kingdom of the Netherlands to pay the costs.

⁽¹⁾ OJ C 209, 15.08.2008.

Judgment of the Court (Fourth Chamber) of 22 October 2009 (reference for a preliminary ruling from the Bundesfinanzhof (Germany)) — Swiss Re Germany Holding GmbH v Finanzamt München für Körperschaften

(Case C-242/08) ⁽¹⁾

(Sixth VAT Directive — Articles 9(2)(e), fifth indent, and 13B(a), (c) and (d)(2) and (3) — Insurance and reinsurance transactions — Concept — Transfer of a portfolio of life reinsurance contracts, for consideration, to a person established in a third country — Determination of the place of that transfer — Exemptions)

(2009/C 297/09)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Swiss Re Germany Holding GmbH

Defendant: Finanzamt München für Körperschaften