

2. Directive 2004/18 must be construed as precluding an interpretation of national legislation, such as that at issue in the main proceedings, which prohibits entities, such as universities and research institutes, which are primarily non-profit-making from taking part in a procedure for the award of a public contract, even though such entities are entitled under national law to offer the services covered by the contract in question.

(¹) OJ C 247, 27.09.2008.

Judgment of the Court (Fourth Chamber) of 23 December 2009 (reference for a preliminary ruling from the Tribunale amministrativo regionale per la Lombardia (Italy)) — Serrantoni Srl, Consorzio stabile edili Srl v Comune di Milano

(Case C-376/08) (¹)

(Public works contracts — Directive 2004/18/EC — Articles 43 EC and 49 EC — Principle of equal treatment — Groups of undertakings — Prohibition on competing participation in the same tendering procedure by a ‘consorzio stabile’ (‘permanent consortium’) and one of its member companies)

(2010/C 51/13)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale per la Lombardia

Parties to the main proceedings

Applicants: Serrantoni Srl, Consorzio stabile edili Srl

Defendant: Comune di Milano

Intervening parties: Bora Srl Construzioni edili, Unione consorzi stabili Italia (UCSI), Associazione nazionale imprese edili (ANIEM),

Re:

Reference for a preliminary ruling — Tribunale amministrativo regionale per la Lombardia — Interpretation of Articles 39 EC, 43 EC, 49 EC and 81 EC and of Article 4 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) — National legislation providing for the automatic exclusion of member companies of a consortium of economic operators, where the consortium itself participates in the procedure.

Operative part of the judgment

Community law must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that, when a public contract is being awarded, with a value below the threshold laid down in Article 7(c) 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, but of certain cross-border interest, both a permanent consortium and its member companies are automatically excluded from participating in that procedure and face criminal sanctions where those companies have submitted tenders in competition with the consortium's tender in the context of the same procedure, even if the consortium's tender was not submitted on behalf and in the interests of those companies.

(¹) OJ C 327, 20.12.2008.

Judgment of the Court (Fifth Chamber) of 17 December 2009 (reference for a preliminary ruling from the Finanzgericht Baden-Württemberg (Germany)) — Swiss Caps AG v Hauptzollamt Singen

(Joined Cases C-410/08 to C-412/08) (¹)

(Common Customs Tariff — Combined Nomenclature — Tariff classification — Tariff headings 1515, 1517, 2106 and 3004 — Gelatin capsules — Fish oil, wheat-germ oil and black cumin oil — Concept of ‘packaging’)

(2010/C 51/14)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicant: Swiss Caps AG

Defendant: Hauptzollamt Singen

Re:

Reference for a preliminary ruling — Finanzgericht Baden-Württemberg (Germany) — Interpretation of Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1) — Headings 1517 ('Margarine; edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, other than edible fats or oils or their fractions of heading 1516') and 2106 ('Food preparations not elsewhere specified or included') — Rule 5(b) in Part A of Section I of Part One of that annex — Tariff classification of a fish-oil preparation to which vitamin E has been added and which is contained in capsules consisting of gelatin, glycerol and water — Concept of 'packing material'

Operative part of the judgment

The Combined Nomenclature, set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 2388/2000 of 13 October 2000, must be interpreted as meaning that:

- *edible preparations presented in the form of capsules containing 600 mg of cold-pressed concentrated fish oil and 22.8 mg of concentrated vitamin E in a casing consisting of 212.8 mg of gelatin, 77.7 mg of glycerol and 159.6 mg of purified water and intended for use as a food supplement;*
- *edible preparations presented in the form of capsules containing 580 mg of wheat-germ oil in a casing consisting of 250 mg of granulated starch and intended for use as a food supplement; and*
- *edible preparations presented in the form of capsules containing 500 mg of cold-pressed black cumin oil, 38.7 mg of soya oil, 18.8 mg of vitamin E, 16 mg of butterfat, 10 mg of lecithin, 8.2 mg of wax, 8 mg of calcium pantothenate, 0.2 mg of folic acid and 0.11 mg of biotin in a casing consisting of 313.97 mg of gelatin mass (47.3 % gelatin, 17.2 % glycerine, 35.5 % water), 4.30 mg of paste consisting of 50 % titanium dioxide and 50 % glycerine, and 1.73 mg of paste consisting of 25 % quinoline yellow lacquer and 75 % glycerine and intended for use as a food supplement*

come under heading 2106 of the abovementioned Combined Nomenclature.

(¹) OJ C 313, 06.12.2008
OJ C 327, 20.12.2008

Judgment of the Court (Second Chamber) of 23 December 2009 — European Commission v Ireland

(Case C-455/08) (¹)

(Failure of a Member State to fulfil obligations — Directives 89/665/EEC and 92/13/EEC — Public supply and public works contracts — Review procedure against a contract award decision — Guarantee of effective review — Minimum period to be ensured between notification to the unsuccessful tenderers of the decision to award a contract and the signature of the contract concerned)

(2010/C 51/15)

Language of the case: English

Parties

Applicant: European Commission (represented by: G. Zavvos and M. Konstantinidis, Agents)

Defendant: Ireland (represented by: D. O'Hagan, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 1(1) and 2(1) of 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) — Infringement of Articles 1(1) and 2(1) of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1992 L 76, p. 14) — Obligation to provide under national law for an effective and rapid review procedure enabling unsuccessful tenderers to procure the annulment of a decision awarding a contract — Time-limits for bringing proceedings

Operative part of the judgment

The Court:

1. Declares that, by adopting Article 49 of Statutory Instrument No 329 of 2006 and Article 51 of Statutory Instrument No 50 of 2007, Ireland established the rules governing the notification of contracting authorities and entities award decisions and their reasoning to tenderers in such a way that by the time that tenderers are fully informed of the reasons for the rejection of their offer, the standstill period preceding the conclusion of the contract may already have expired, and that, by so doing, Ireland has failed to fulfil its obligations under Articles 1(1) and 2(1) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and