

2. If Question 1 is to be answered in the affirmative, what criteria may the national courts take into account in the context of that review, in particular in the case that the contractual term does not grant jurisdiction to the judicial body corresponding to the registered office of the service provider, but to a different judicial body which is located close to that registered office?
3. Pursuant to the first paragraph of Article 23 of the Protocol on the Statute of the Court of Justice annexed to the Treaty on European Union, the Treaty establishing the European Community and the Treaty establishing the European Atomic Energy Community, is the possibility precluded for the national courts to inform the Ministry of Justice of their own Member State that a reference for a preliminary ruling has been made at the same time as making that reference?

(¹) OJ 1993 L 95, p. 29.

Reference for a preliminary ruling from the Fővárosi Ítéltábla (Hungary) lodged on 7 April 2008 — Hochtief AG, Linde-Kca-Dresden GmbH v Közbeszerzések Tanácsa Közbeszerzési Döntőbizottság

(Case C-138/08)

(2008/C 183/16)

Language of the case: Hungarian

Referring court

Fővárosi Ítéltábla (Hungary)

Parties to the main proceedings

Applicant: Hochtief AG, Linde-Kca-Dresden GmbH

Defendant: Közbeszerzések Tanácsa Közbeszerzési Döntőbizottság

Intervener: Budapest Főváros Önkormányzata

Questions referred

1. Is the procedure laid down in Article 44(3) of Directive 2004/18/EC, which replaced Article 22 of Council Directive 93/37/EEC (¹) concerning the coordination of procedures for the award of public works contracts, applicable where the procurement procedure was initiated at a time when Directive 2004/18/EC (²) had already entered into force, but the

time-limit granted to Member States for implementing that directive had not yet expired, so that the directive had not been incorporated into national law?

2. If the answer to the first question is in the affirmative, this court further asks whether, in the case of negotiated procedures with publication of a contract notice, — having regard to the fact that Article 44(3) of Directive 2004/18/EC provides that '[i]n any event the number of candidates invited shall be sufficient to ensure genuine competition' — the limitation of the number of suitable candidates should be interpreted as meaning that in the second stage — that of awarding the contract — there must invariably be a minimum number of candidates (three)?
3. If the answer to the first question is in the negative, this court further asks the Court of Justice whether the requirement that 'there be a sufficient number of suitable candidates', under Article 22(3) of Council Directive 93/37/EEC concerning the coordination of procedures for the award of public works contracts ('Directive 93/37'), should be interpreted as meaning that where the minimum number of suitable candidates invited to take part is not reached (three), the procedure cannot continue to the stage of invitation to tender?
4. If the Court of Justice replies to the third question in the negative, this court further asks whether the second paragraph of Article 22(2) of Directive 93/37 — in the rules on restricted procedures, according to which '[i]n any event, the number of candidates invited to tender shall be sufficient to ensure genuine competition' — is applicable to two-stage negotiated procedures, governed by Article 22(3)?

(¹) OJ 1993 L 199, p. 54.

(²) OJ 2004 L 134, p. 114.

Reference for a preliminary ruling from the Oberlandesgericht Karlsruhe (Germany) lodged on 7 April 2008 — Criminal proceedings against Rafet Kçiku

(Case C-139/08)

(2008/C 183/17)

Language of the case: German

Referring court

Oberlandesgericht Karlsruhe