

**Action brought on 20 October 2008 — Commission of the European Communities v Ireland**

(Case C-456/08)

(2008/C 313/29)

*Language of the case: English*

**Parties**

*Applicant:* Commission of the European Communities (represented by: G. Zavvos, M. Konstantinidis and D. Kukovec, Agents)

*Defendant:* Ireland

**The applicant claims that the Court should:**

- Declare that, by way of the rules on time limits in the national legislation regulating the exercise of the right of tenderers to judicial review in public procurement procedures and by failing to notify the award decision to the complainant in the award decision in question, Ireland has failed to fulfil its obligations under, concerning the applicable time limits, Article 1(1) of Council Directive 89/665/EEC <sup>(1)</sup> on the application of review procedures to the award of public supply and public work contracts as interpreted by the Court and, concerning the lack of notification, under Article 1(1) of Directive 89/665/EEC as interpreted by the Court and Article 8(2) of council directive 93/37/EEC <sup>(2)</sup> on the coordination of procedures for the award of public works contracts.
- order Ireland to pay the costs.

**Pleas in law and main arguments**

In the Commission's view Irish law does not appear to be in line with the fundamental principle of legal certainty and the requirement of effectiveness under directive 89/665/EEC which is an application of this principle, since tenderers are left in uncertainty as to their position if they intend to challenge an award decision of a contracting authority in two-phase award procedures where a preferred bidder is selected prior to the final award decision. Ireland must take measures to ensure that tenderers have clarity and certainty as to which decision of the contracting authority they may challenge and from which date time limits are to be considered. It must be made clear to tenderers if Order 84A applies not only to the award decisions but also to interim decisions of a contracting authority taken during the contract award procedure (e.g. regarding the selection of the preferred bidder), with the effect that the circumstances embodied in the interim decision cannot be challenged following the lapse of the time limit reckoned from that interim decision nor may the award decision be challenged on the basis of the circumstances already embodied in the interim decision.

Order 84A requires that actions need to be brought 'at the earliest opportunity and in any event within three months'. The Commission considers that this formulation leaves tenderers in uncertainty regarding their position when they consider making use of their Community law right to effective legal remedy against a decision of a contracting authority. In the Commission's view it needs to be made clear for tenderers which deadline applies for bringing an action against the contracting authority's decisions and that, with a view to the obligation to respect the fundamental principle of legal certainty, the applicable time limit needs to be a fixed one which can be interpreted in a clear and foreseeable manner by all tenderers.

<sup>(1)</sup> OJ L 395, p. 33.

<sup>(2)</sup> OJ L 199, p. 42.

**Action brought on 21 October 2008 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland**

(Case C-457/08)

(2008/C 313/30)

*Language of the case: English*

**Parties**

*Applicant:* Commission of the European Communities (represented by: N. Yerrell, Agent)

*Defendant:* United Kingdom of Great Britain and Northern Ireland

**The applicant claims that the Court should:**

- declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2005/14/EC <sup>(1)</sup> of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles, or in any event by failing to notify those provisions to the Commission, the United Kingdom has failed to fulfil its obligations under Article 6 of the Directive.

— order United Kingdom of Great Britain and Northern Ireland to pay the costs.

**Order of the President of the Court of 20 August 2008 (reference for a preliminary ruling from the Special Commissioner of Income Tax, London — United Kingdom) — Vodafone 2 v Her Majesty's Revenue and Customs**

### Pleas in law and main arguments

The period within which the directive had to be transposed expired on 11 June 2007.

(Case C-203/05) <sup>(1)</sup>

<sup>(1)</sup> OJ L 149, p. 14.

(2008/C 313/32)

*Language of the case: English*

### Action brought on 21 October 2008 — Commission of the European Communities v Portuguese Republic

(Case C-459/08)

(2008/C 313/31)

*Language of the case: Portuguese*

The President of the Court has ordered that the case be removed from the register.

<sup>(1)</sup> OJ C 182, 23.7.2005.

### Parties

*Applicant:* Commission of the European Communities (represented by: H. Støvlbæk and M. França, acting as Agents)

*Defendant:* Portuguese Republic

**Order of the President of the Court of 5 September 2008 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia — Italy) — Colasfatti S.r.l. v Provincia di Milano, ATI Legrenzi Srl, Impresa Costruzioni Edili e Stradali dei F. 11i Paccani Snc**

### Form of order sought

— Declare that, by failing to adopt and publish the laws, regulations and administrative provisions necessary to comply with Directive 2005/36/EC <sup>(1)</sup> of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications or, in any event, by failing to notify the Commission of such measures, the Portuguese Republic has failed to fulfil its obligations under that directive;

(Case C-214/06) <sup>(1)</sup>

(2008/C 313/33)

— order the Portuguese Republic to pay the costs.

*Language of the case: Italian*

### Pleas in law and main arguments

The period prescribed for transposing the directive expired on 20 October 2007.

The President of the Court has ordered that the case be removed from the register.

<sup>(1)</sup> OJ 2005 L 255, p. 22.

<sup>(1)</sup> OJ C 178, 29.7.2006.