

Case C-215/09

**Mehiläinen Oy and Terveystalo Healthcare Oy,
formerly Suomen Terveystalo Oyj**

v

Oulun kaupunki

(Reference for a preliminary
ruling from the markkinaoikeus)

(Public service contracts — Directive 2004/18/EC — Mixed contract — Contract concluded between a contracting authority and a private company independent of it — Establishment, on an equal basis, of a joint venture to provide health care services — Undertaking by the partners to purchase health care services for their staff from the joint venture for a transitional period of four years)

Judgment of the Court (Third Chamber), 22 December 2010 I - 13751

Summary of the Judgment

*Approximation of laws — Procedures for the award of public works contracts, public supply contracts and public service contracts — Directive 2004/18 — Scope
(European Parliament and Council Directive 2004/18)*

Directive 2004/18 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as meaning that, when a contracting authority concludes with a private company independent of it a contract establishing a joint venture in the form of a share company, the purpose of which is to provide occupational health care and welfare services, the award by the contracting authority of the contract relating to the services for its own staff, the value of which exceeds the threshold laid down by that directive, and which is severable from the contract establishing that company, must be made in accordance with the provisions of that directive applicable to the services in Annex II B thereof.

Although the creation, by a contracting authority and a private economic operator, of a joint enterprise is not covered as such by Directive 2004/18, a capital operation cannot, in reality, conceal the award to a private

partner of contracts which might be considered to be public contracts or concessions. Furthermore, the fact that a private entity and a contracting entity cooperate within a mixed capital entity cannot justify failure to observe the provision or public procurement when awarding such a contract to that private entity or that mixed capital entity. Thus, where the need to conclude such a mixed contract with a single partner is not objectively demonstrated and the component of the mixed contract consisting in the undertaking by the contracting authority to purchase health care services for its staff from the joint venture is severable from that contract, the relevant provisions of Directive 2004/18 are applicable to the award of that aspect.

(see paras 33-34, 45-47, operative part)