

to the income derived from that fee, and which significantly increases the fee for a particular technology but leaves it unchanged for another.

(<sup>1</sup>) OJ C 134, 22.5.2010.

**Judgment of the Court (Third Chamber) of 17 March 2011 (reference for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Strong Segurança SA v Município de Sintra, Securitas-Serviços e Tecnologia de Segurança**

(Case C-95/10) (<sup>1</sup>)

(Public service contracts — Directive 2004/18/EC — Article 47(2) — Direct effect — Whether applicable to the services referred to in Annex II B to that directive)

(2011/C 139/17)

Language of the case: Portuguese

#### Referring court

Supremo Tribunal Administrativo

#### Parties to the main proceedings

Appellant: Strong Segurança SA

Respondents: Município de Sintra, Securitas-Serviços e Tecnologia de Segurança

#### Re:

Reference for a preliminary ruling — Supremo Tribunal Administrativo — Interpretation of Articles 21, 23, 35(4) and 47(2) of, and of Annex II B to, 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) — Economic and financial capacity of the tenderers — Whether an economic operator can rely on the capacities of other entities — Direct effect of a directive implemented late

#### Operative part of the judgment

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 does not create the obligation, for Member States, to apply Article 47(2) of that directive also to contracts which have as their object services referred to in Annex II B thereto. However, that directive does not preclude Member States and, possibly, contracting authorities from providing for such application in, respectively, their legislation and the documents relating to the contract.

(<sup>1</sup>) OJ C 113, 1.5.2010.

**Judgment of the Court (Eighth Chamber) of 17 March 2011 (reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece)) — Navtiliaki Etairia Thasou AE (C-128/10), Amalthia I Navtiki Etairia (C-129/10) v Ipourgos Emborikis Navtilias**

(Joined Cases C-128/10 and C-129/10) (<sup>1</sup>)

(Reference for a preliminary ruling — Freedom to provide services — Maritime cabotage — Regulation (EEC) No 3577/92 — Articles 1 and 4 — Prior administrative authorisation for cabotage services — Review of conditions relating to the safety of ships — Maintenance of order in ports — Public service obligations — Absence of precise criteria known in advance)

(2011/C 139/18)

Language of the case: Greek

#### Referring court

Simvoulio tis Epikratias

#### Parties to the main proceedings

Applicants: Navtiliaki Etairia Thasou AE (C-128/10), Amalthia I Navtiki Etairia (C-129/10)

Defendant: Ipourgos Emborikis Navtilias

Intervener: Koinopraxia Epibatikon Ochimatagogon Ploion Kavalas — Thasou (C-128/10)

#### Re:

Reference for a preliminary ruling — Simvoulio tis Epikratias — Interpretation of Arts 1, 2 and 4 of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7) — National legislation requiring prior administrative authorisation for cabotage services — System aimed at verifying whether schedules can be implemented under conditions of safety for the ship and maintenance of order in the port — No precise criteria known in advance

#### Operative part of the judgment

The provisions of Article 1 in conjunction with Article 4 of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) must be interpreted as not precluding national legislation which establishes a system of prior authorisation for maritime cabotage services providing for the adoption of administrative decisions imposing compliance with certain timeslots for reasons relating, first, to the safety of ships and order in ports and, second, to public service obligations, provided that such a system is based on objective, non-discriminatory criteria which are known in advance, particularly in cases where more than one shipowner is interested in entering the same port at the same time. With respect to the administrative decisions imposing public service obligations, it is also necessary that a genuine public service need