

Action brought on 8 October 2010 — European Commission v Federal Republic of Germany

(Case C-486/10)

(2011/C 13/28)

Language of the case: German

Parties

Applicant: European Commission (represented by: G. Wilms and C. Zadra, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

— Declare that, by the fact that the City of Hamm directly awarded to the Lippeverband, without previously issuing a Europe-wide invitation to tender, service contracts of 30 July and 16 December 2003 for waste water collection and disposal and the servicing, operation, maintenance and monitoring of the sewage system of the City of Hamm, the Federal Republic of Germany has failed to fulfil its obligations under Article 8, in conjunction with Titles III to VI of Directive 92/50/EEC; ⁽¹⁾

— order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The subject-matter of the present claim is the contracts for pecuniary interest for waste water collection and disposal and the servicing, operation, maintenance and monitoring of the sewage system of the City of Hamm, which that City concluded with a legally-constituted sewage group, the Lippeverband. The Lippeverband is a public-law body required to fulfil tasks prescribed by law in the field of water management. Around 25 % of its members are private undertakings. Under the contracts at issue, the Lippeverband was to have taken over the collection and disposal of waste water in the area of the City of Hamm on 1 January 2004, for which purpose the City set up a remuneration package declared as a 'special-interest contribution'. In order to have that service responsibility undertaken, the City of Hamm transfers the right to exclusive, long-term and comprehensive use of its sewage installations, for which the Lippeverband is to make a compensatory payment.

Although the service contracts in question are public service contracts within the meaning of Article 1(a) of Directive 92/50/EEC, they were concluded directly with the Lippeverband without a formal contract award procedure or a Europe-wide invitation to tender. The contracts are clearly to be classified as service contracts for pecuniary interest. They have been concluded by a public contracting authority for an unspecified period, have as their subject-matter the supply of waste-water disposal services within the meaning of Category 16 of Annex IA to that directive, and significantly exceed the threshold for application of the directive. Conclusion of the contracts should therefore have been subject to a Europe-wide invitation to tender.

Contrary to the assertions of the German Government, the transfer of the supply of services in question is neither a State measure of organisation nor a so-called 'in-house' award.

Firstly, it is doubtful whether a service responsibility can be transferred to a semi-public water authority such as the Lippeverband by a measure of State organisation, with approximately 25 % of private investors, without there being a Community contract award procedure. In the Commission's view, measures of State organisation, to which the provisions on the award of public contracts do not apply, are conceivable only between public institutions, whose activities serve exclusively the public interest. The fact that water authorities are entrusted by law with certain responsibilities in respect of sewage management does not alter in any way the fact that the Lippeverband is not part of the national administrative organisation for the purposes of Community law. Irrespective, however, of whether that responsibility can be transferred to the Lippeverband by a measure of State organisation, in the present case there is no such transfer of responsibility. The fact that the City of Hamm pays an annual remuneration for the supply of the services by the Lippeverband clearly places those contracts in the category of service contracts for pecuniary interest and excludes the possibility of there being a transfer of responsibility as part of public administration.

Secondly, as regards the exclusion of a so-called 'in-house' transaction from application of the rules governing the award of public contracts, in accordance with the case-law of the Court of Justice, those exceptions cannot apply where a private undertaking has a holding, even a minority one — in the institution given that responsibility. In such a case, the public awarding authority cannot have the same control over the undertaking in question as over its own services.

It follows from that analysis that this is a public service contract for pecuniary interest and no exempting provisions apply. Thus, by the direct award by the City of Hamm of the city sewage contracts, the Federal Republic of Germany has infringed the provisions of Directive 92/50.

⁽¹⁾ Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1).

Reference for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 12 October 2010 — Criminal proceedings against Łukasz Marcin Bonda

(Case C-489/10)

(2011/C 13/29)

Language of the case: Polish

Referring court

Sąd Najwyższy

Party to the main proceedings

Łukasz Marcin Bonda

Question referred

What is the legal nature of the sanction provided for in Article 138 of Commission Regulation (EC) No 1973/2004 of 29 October 2004 laying down detailed rules for the application of Council Regulation (EC) No 1782/2003 as regards the support schemes provided for in Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials (OJ 2004 L 345, p. 1) which consists in refusing a farmer direct payments in the years immediately following the year in which he submitted an incorrect statement as to the size of the area forming the basis for direct payments?

Action brought on 12 October 2010 — European Parliament v Council of the European Union

(Case C-490/10)

(2011/C 13/30)

Language of the case: French

Parties

Applicant: European Parliament (represented by: M. Gómez-Leal, J. Rodrigues, L. Visaggio, acting as Agents)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EU, Euratom) No 617/2010 of 24 June 2010 concerning the notification to the Commission of investment projects in energy infrastructure within the European Union and repealing Regulation (EC) No 736/96; ⁽¹⁾

— Order the Council of the European Union to pay the costs.

Pleas in law and main arguments

By its action, the European Parliament seeks the annulment of Regulation (EU, Euratom) No 617/2010 of 24 June 2010 by which the Council established a common framework for the notification to the Commission of information on investment projects in energy infrastructure. The regulation was adopted by the Council on the dual legal basis of Articles 337 TFEU and 187 EA. According to the Parliament, the Council's choice of legal basis is erroneous because the measures covered by the contested regulation fall within the energy responsibilities of the Union which are specifically governed by Article 194 TFEU. Those measures should, therefore, have been adopted on the basis of Article 194(2) TFEU in accordance with the ordinary legislative procedure laid down in that provision, instead of on the basis of Article 337 TFEU, which does not provide for any

involvement by the Parliament. In addition, the Parliament takes the view that it was not necessary to rely also on Article 187 EA in order to adopt the measures at issue.

⁽¹⁾ OJ 2010 L 180, p. 7.

Reference for a preliminary ruling from the Unabhängiger Finanzsenat, Außenstelle Linz (Austria) lodged on 14 October 2010 — Immobilien Linz GmbH & Co KG v Finanzamt Freistadt Rohrbach Urfahr

(Case C-492/10)

(2011/C 13/31)

Language of the case: German

Referring court

Unabhängiger Finanzsenat, Außenstelle Linz

Parties to the main proceedings

Appellant: Immobilien Linz GmbH & Co KG

Respondent: Finanzamt Freistadt Rohrbach Urfahr

Question referred

Does the absorption of a company's losses by its sole member, a public body whose representative was instructed by the competent body to grant an annual member's contribution to cover losses up to the amount provisionally earmarked in the budget estimate or business plan adopted by the company prior to the beginning of the financial year, increase the assets of that company within the meaning of Article 4(2)(b) of Directive 69/335/EEC ⁽¹⁾ (which is identical to Article 3(h) of Directive 2008/7/EC)?

⁽¹⁾ Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ 1969 L 249, p. 25)

Reference for a preliminary ruling from High Court of Ireland made on 15 October 2010 — M. E. and others v Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform

(Case C-493/10)

(2011/C 13/32)

Language of the case: English

Referring court

High Court of Ireland