

**Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on
29 August 2014 — Dr. Falk Pharma GmbH v DAK-Gesundheit**

(Case C-410/14)

(2014/C 409/41)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Dr. Falk Pharma GmbH

Defendant: DAK-Gesundheit

Questions referred

The following questions are referred to the Court of Justice of the European Union under Article 267 TFEU for a preliminary ruling on the interpretation of 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 ... ⁽¹⁾:

1. Does the concept of a 'public contract' under Article 1(2)(a) of Directive 2004/18/EC no longer apply if a contracting authority carries out an authorisation procedure in which it awards the contract without selecting one or more economic operators ('openhouse model')?
2. If the answer to question 1 is that the selection of one or more economic operators is a characteristic of a public contract, the following question arises: is the characteristic of the selection of economic operators within the meaning of Article 1(2)(a) of Directive 2004/18/EC to be interpreted, in the light of Article 2 of that directive, as meaning that contracting authorities may refrain from selecting one or more economic operators by way of an authorisation procedure only if the following conditions are satisfied:
 - the carrying out of an authorisation procedure is published at European level,
 - clear rules concerning the conclusion of the contract and acceding to the contract are set,
 - the terms of the contract are set in advance in such a way that no economic operator is able to influence the content of the contract,
 - economic operators are granted the right to accede to the contract at any time;
 - the contracts concluded are published at European level?

⁽¹⁾ OJ 2004 L 134, p. 114.

**Appeal brought on 25 September 2014 by the Federal Republic of Germany against the judgment of
the General Court (Fifth Chamber) delivered on 16 July 2014 in Case T-295/12 Federal Republic of
Germany v European Commission**

(Case C-446/14 P)

(2014/C 409/42)

Language of the case: German

Parties

Appellant: Federal Republic of Germany (represented by: T. Henze and J. Möller, acting as Agents, Prof. Dr. T. Lübbig and Dr. M. Klasse, Rechtsanwälte)

Other party to the proceedings: European Commission