

2. Orders Ireland to pay the costs.

⁽¹⁾ OJ C 347, 16.10.2017.

Judgment of the Court (Eighth Chamber) of 18 October 2018 (request for a preliminary ruling from the Consiglio di Stato — Italy) — IBA Molecular Italy Srl v Azienda ULSS No 3 and Others

(Case C-606/17) ⁽¹⁾

(Reference for a preliminary ruling — Public supply contracts — Directive 2004/18/EC — Article 1(2) (a) — Contract awarded outside a public procurement procedure — Definition of ‘contracts for pecuniary interest’ — Definition of ‘public entity’)

(2018/C 455/24)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: IBA Molecular Italy Srl

Defendant: Azienda ULSS No 3, Regione Veneto, Ministero della Salute, Ospedale dell'Angelo di Mestre

Intervening parties: Istituto Sacro Cuore Don Calabria di Negrar, Azienda ULSS No 22

Operative part of the judgment

1. Articles 1(2)(a) 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 must be interpreted as meaning that the concept of ‘contract for pecuniary interest’ includes a decision by which a contracting authority directly awards, to a specific economic operator, and therefore without organising a public tendering procedure, specific-purpose funding for the manufacture of products to be supplied free of charge by that economic operator to various authorities which are exempt from payment of any consideration to the supplier, except for the payment of a fixed sum of EUR 180 per delivery, for transport costs.
2. Article 1(2)(a) and Article 2 of Directive 2004/18 must be interpreted as precluding national rules, such as those at issue in the main proceedings which, by treating private ‘classified’ hospitals as equivalent to public hospitals on account of their integration into the system of national public healthcare planning governed by special agreements that are distinct from ordinary accreditation relationships with other private parties that participate in the system of provision of healthcare services, take them outside the scope of national and EU rules on public contracts, including in cases where such classified hospitals are entrusted with the manufacture and supply, free of charge, to public healthcare establishments of specific products which are necessary for the provision of healthcare services and where, at the same time, they receive public funding specifically for the manufacture and supply of those products.

⁽¹⁾ OJ C 22, 22.1.2018.
