



Reports of Cases

Order of the Court (Eighth Chamber) of 17 May 2022 – Estaleiros Navais de Peniche

(Case C-787/21)

(Request for a preliminary reference – Article 99 of the Rules of Procedure of the Court of Justice – Review procedures in respect of the award of public supply and public works contracts – Directive 89/665/EEC – Article 1(3) – Interest in bringing proceedings – Access to the review procedures – Tenderer excluded by a decision of the contracting authority which has become final, as a result of failing to challenge all the grounds for rejection of its tender – No interest in bringing proceedings)

Approximation of laws – Review procedures in respect of the award of public supply and public works contracts – Directive 89/665 – Member States' duty to provide for a review procedure – Access to the review procedures – No possibility for a tenderer excluded by a decision of the contracting authority which has become final to bring an action with a view to obtaining a declaration that the decision to award the contract is unlawful – No interest in bringing proceedings – Whether permissible

(Council Directive 89/665, as amended by Directive 2007/66, Art. 1(3))

(see paras 21-27, 30, operative part)

Operative part

Article 1(3) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007, must be interpreted as precluding a tenderer who was eliminated from a public procurement procedure by a decision of the contracting authority which has become final from contesting the decision to award that contract. In that regard, it is irrelevant that the unsuccessful tenderer submits that it could potentially be awarded the contract in the case if, following the annulment of that decision, the contracting authority were to decide to launch a new award procedure.