

Must Articles 10 to 13 of Commission Regulation (EEC) No 1984/83 ⁽¹⁾ of 22 June 1983 on the application of Article 85(3) of the Treaty [now Article 81 EC] to categories of exclusive purchasing agreements be construed as meaning that they include within their scope contracts for the exclusive distribution of motor-vehicle and other fuels which are nominally classified as commission or agency contracts and which contain the following clauses?

- (A) The service-station proprietor undertakes to sell the supplier's motor-vehicle and other fuels in accordance with the retail prices, conditions, and sales and business methods stipulated by the supplier.
- (B) The service-station proprietor assumes the risk associated with the products as soon as he receives them from the supplier in the storage tanks at the service station.
- (C) Once he has received the products, the proprietor assumes the obligation to keep the products in the conditions necessary to ensure that they undergo no loss or deterioration and is liable, where applicable, both to the supplier and to third parties for any loss, contamination or adulteration which may affect the products and for any damage arising as a result thereof.
- (D) The service-station proprietor is required to pay the supplier the cost of the motor-vehicle and other fuels nine (9) days after the date of their delivery to the service station.

⁽¹⁾ OJ L 173 of 30.6.1983 ; EE 08/02, p. 114.

Reference for a preliminary ruling from the Tribunal Administratif de Lyon (France) by judgment of that court of 7 April 2005 in the case Jean Auroux and Others v Commune de Roanne — Intervener: Société d'équipement du département de la Loire

(Case C-220/05)

(2005/C 193/19)

(Language of the case: French)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal Administratif

de Lyon of 7 April 2005, received at the Court Registry on 19 May 2005, for a preliminary ruling in the proceedings between Jean Auroux and Others and Commune de Roanne — Intervener: Société d'équipement du département de la Loire, on the following questions:

1. Does a contract under which one contracting authority engages a second contracting authority to carry out a development project for a purpose of general interest, pursuant to which contract that second contracting authority is to deliver works to the first which are intended to meet its needs, and at the end of which such of the other land and works as have not been disposed of to third parties vest automatically in the first contracting authority, constitute a public works contract within the meaning of Article 1 of Directive 93/37/EEC of 14 June 1993, ⁽¹⁾ as amended?
2. If the answer to question 1 is in the affirmative, is it necessary, in assessing the threshold of 500 000 000 special drawing rights imposed by Article 6 of the same directive, to take into account only the price paid in return for the delivery of the works to the contracting authority, or the sum of that price and the contributions paid, even if the latter are only partly allocated to the execution of those works, or the total value of the works, with assets not disposed of at the end of the contract vesting automatically in the first contracting authority and the latter then pursuing the execution of ongoing contracts and assuming the debts incurred by the second contracting authority?
3. If the answer to both questions 1 and 2 is in the affirmative, can the first contracting authority, when entering into such a contract, dispense with the procedures for awarding public works contracts laid down in that directive, on the grounds that that contract can be awarded only to certain legal persons and that those same procedures will be applied by the second contracting authority when awarding its public works contracts?

⁽¹⁾ Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54).