

Question(s) referred*Defendant:* Ireland

1. Does the rule laid down in Article 30(4) of Directive 93/37/EEC ⁽¹⁾ or the similar rule contained in Article 55 (1) and (2) of Directive 2004/18/EC ⁽²⁾ (where that is regarded as the relevant provision), that, where tenders appear to be abnormally low in relation to the works, the contracting authority shall, before it may reject those tenders, request, in writing, details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received, constitute a fundamental principle of Community law, such as to transcend the formal bounds set by the value of the contracts mentioned in Article 6 of Directive 93/37/EC and is it, therefore, capable of applying also to contracts when their value does not cross that threshold?
2. Is the rule established by Article 30(4) of Directive 93/37/EEC or the similar rule contained in Article 55(1) and (2) of Directive 2004/18/EC (where that is regarded as the relevant provision), according to which, if tenders appear to be abnormally low in relation to the works, the contracting authority shall, before it may reject those tenders, request, in writing, details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received, while not presenting the characteristics of a fundamental principle of Community law, nevertheless an implied consequence of or a 'principle deriving from' the principle of competition, considered in conjunction with the principles of administrative transparency and non-discrimination on grounds of nationality and is it therefore, as such, directly binding, taking precedence over possibly incompatible national provisions adopted by the Member States to regulate public works contracts to which Community law is not directly applicable?

⁽¹⁾ OJ 199, p. 54.

⁽²⁾ OJ 134, p. 114.

Action brought on 11 May 2006 — Commission of the European Communities v Ireland

(Case C-215/06)

(2006/C 178/32)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: D. Recchia and D. Lawunmi, Agents)

The applicant claims that the Court should:

1. declare that, by failing to adopt all measures necessary to ensure that projects which are within the scope of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment ⁽¹⁾ either before or after modification by Directive 97/11/EC ⁽²⁾ are, before they are executed are in whole or in part, first considered with regard to the need for an environmental impact assessment and, secondly, where likely to have significant effects on the environment by virtue, of their nature, size or location, made subject to an assessment with regard to their effects in accordance with Articles 5 to 10 of Directive 85/337/EEC, Ireland has failed to comply with the obligations that it has under Articles 2, 4 and 5 to 10 of Directive 85/337/EEC, and
 - by failing to adopt all measures necessary to ensure that the development consents given for and the execution of wind-farm developments and associated works at Derrybrien, County Galway were preceded by an assessment with regard to their effects in accordance with Articles 5 to 10 of Directive 85/337/EEC, Ireland has failed to comply with the obligations that it has under Articles 2, 4 and 5 to 10 of the said Directive 85/337/EEC;
2. order Ireland to pay the costs of these proceedings.

Pleas in law and main arguments

The Commission submits that Ireland's implementation of Council directive 85/337/CEE (the Impact Assessment Directive) is and has been deficient for the following reasons:

Ireland has failed to take measures to ensure that checks are made to ascertain whether proposed works are liable to have significant effects on the environment in accordance with Article 2(1) of the Impact Assessment Directive. Ireland's legislation does not provide that those effects are assessed in accordance with Articles 5 to 10 of the directive.

The system in Ireland which allows an application for retention permission to be made after a development has been executed in whole or in part without consent undermines the preventive objectives of the Impact Assessment Directive.

The enforcement regime in Ireland does not guarantee the effectiveness of the application of the Impact Assessment Directive. Consequently Ireland has failed to fulfil its general obligation under article 249 of the Treaty to ensure that the directive is applied effectively

There have been a number of particular deficiencies in relation to the undertaking of environmental impact assessments for a wind farm at Derrybrien, County Galway, which amount to a manifest breach of the directive.

⁽¹⁾ OJ L 175, p. 40.

⁽²⁾ OJ L 73, p. 5.

Action brought on 12 May 2006 — Commission of the European Communities v Italian Republic

(Case C-217/06)

(2006/C 178/33)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: X. Lewis, agent, M. Mollica, lawyer)

Defendant: Italian Republic

Form of order sought

— Declare that, as the commune of Stintino awarded directly to Maresar, through Agreement No 7/91 of 2 October 1991 and connected measures, a public works contract concerning the execution of the works mentioned in Resolution No 48 of the municipal council of Stintino of 14 December 1989, particularly the 'detailed design and construction of the works for the technological and structural adaptation, rehailing and completion of the water supply and drainage networks, the road network, the buildings and service facilities in the town centre, the tourist areas in and outside the territory of the commune of Stintino, including the clean-up and depollution of the coast and the tourist centres situated in that commune', without following the procedures laid down by Council Directive 71/305/EEC ⁽¹⁾ and, in particular, without publishing a notice of invitation to tender in the Official Journal of the European Communities, the Commission of the European Communities considers that the Italian Republic has failed to fulfil its obligations under Council Directive 71/305/EEC,

which co-ordinates the procedures for the award of public works contracts, in particular under Articles 3 and 12 thereof.

— Order the Italian Republic to pay the costs of the proceedings.

Pleas in law and main arguments

The Commission considers that the Agreement of 2 October 1991 between the commune of Stintino and Maresar is a public works contract under Community law. The said contract, the subject of which is works with a value (around EUR 16 million) clearly greater than the threshold for the application of the Directive, which was in force at that time, should have been awarded in accordance with the rules laid down by that Directive.

As regards the Italian authority's arguments put forward to justify their non-fulfilment, the Commission recalls that, in accordance with settled case-law, a Member State cannot rely on internal difficulties to justify failure to fulfil obligations derived from Community law.

⁽¹⁾ OJ L 185, p. 5.

Reference for a preliminary ruling from the Audiencia Nacional, Sala de lo Contencioso-Administrativo (España) of 15 May 2006 — Asociación Profesional de Empresas de Reparto y Manipulado de Correspondencia. v Administración del Estado (Ministerio de Educación y Ciencia)

(Case C-220/06)

(2006/C 178/34)

Language of the case: Spanish.

Referring court

Audiencia Nacional, Sala de lo Contencioso-Administrativo (National High Court, Chamber for Contentious Administrative Proceedings)

Parties to the main proceedings

Applicant: Asociación Profesional de Empresas de Reparto y Manipulado de Correspondencia

Defendant: Ministerio de Educación y Ciencia