OPINION OF ADVOCATE GENERAL STIX-HACKL

delivered on 15 March 2005 [1]

I — Introductory remarks

1. This reference for a preliminary ruling concerns the review of decisions taken by contracting authorities in the award of contracts and in particular it relates to the capacity to bring legal proceedings enjoyed by individual members of a consortium entered into under Belgian law which, for the purposes of Community public procurement law, must be regarded as a group of contractors (or in the terminology of the new public procurement directives [2] as a 'group of economic operators').

II — Legal framework

A — *Community law*

2. Article 1 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 [3] (hereinafter: 'the Directive') inter alia provides:

'(1) The Member States shall take the measures necessary to ensure that, as regards contract award procedures falling within the scope of Directives 71/305/EEC, 77/62/EEC, and 92/50/EEC ... decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in the following Articles, and, in

1 — Original language: German.

2 — Article 4(2) 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, OJ 2004 L 134, p. 114, and Article 11(2) of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, OJ 2004 L 134, p. 1.

3 — OJ 1989 L 395, p. 33, as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, OJ 1992 L 209, p. 1.

particular, Article 2(7) on the grounds that such decisions have infringed Community law in the field of public procurement or national rules implementing that law.

...

(3) The Member States shall ensure that the review procedures are available, under detailed rules which the Member States may establish, at least to any person having or having had an interest in obtaining a particular public supply or public works contract and who has been or risks being harmed by an alleged infringement. In particular, the Member States may require that the person seeking the review must have previously notified the contracting authority of the alleged infringement and of his intention to seek review.'

3. Article 2(1) of Directive 89/665 inter alia provides:

'The Member States shall ensure that the measures taken concerning the review procedures specified in Article 1 include provision for the powers to:

...

(b) either set aside or ensure the setting aside of decisions taken unlawfully, including the removal of discriminatory technical, economic or financial specifications in the invitation to tender, the contract documents or in any other document relating to the contract award procedure;

...'

4. Article 21 of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts [4] provides:

'Tenders may be submitted by groups of contractors. These groups may not be required to assume a specific legal form in order to submit the tender; however, the group selected may be required to do so when it has been awarded the contract.'

4 — OJ 1993 L 199, p. 54, subsequently amended.

B — *National law*

5. The relevant provisions are those of Article 19(1) of the Laws on the Conseil d'État (Council of State), consolidated on 12 January 1973, which govern inter alia legal capacity to bring review proceedings.

6. Article 53 of the Code des sociétés (Company Law Code) governs fundamental aspects of the relations of a consortium ('association momentanée') with third parties.

7. Article 522(2) of the Code des sociétés provides that a 'société anonyme' is to be represented by its Board of Directors inter alia before a court. The same provision permits the company's articles of association to provide for such representation by one or more administrative officers.

III — Facts, preliminary procedure and questions referred

8. On 30 September 1997, a contract notice was published in the *Official Journal of the European Communities* for the Office communautaire et régional de la formation professionnelle et de l'emploi (hereinafter: FOREM), setting out the subject-matter as follows: 'the design, construction and financing of a building of approximately 6 500 m^2 (clear) above ground level, for the use of the administrative staff of the Office regional de l'emploi (Liège District Headquarters)', and stating that alternative plans were authorised. Four amendment notices were subsequently published.

9. On 20 February 1998, the tenders were opened. Five tenders had been submitted, including those submitted by the groups of contractors (associations momentanées; consortia) Espace Trianon-Sofibail and CIDP-BPC. The Espace Trianon–Sofibail consortium consists of Espace Trianon SA (hereinafter: 'Espace') and the Société Wallone de Location-Financement SA (Sofibail).

10. On 22 December 1998, the management committee of FOREM awarded a contract for the design, construction and financing of a building of approximately 6 500 m^2 (clear) above ground level, for the use of the FOREM administrative staff, Liège District Headquarters, to the CIDP-BPC consortium.

11. On 8 January 1999, the management committee of FOREM approved 'the rea-

soned decision as adopted at its meeting of 22 December 1998'.

12. On 25 January 1999, the decision awarding the contract was notified to Espace and Sofibail.

13. On 19 February 1999, Espace and Sofibail applied to the Conseil d'État to have the decision to award the contract set aside.

14. On 8 March 1999, Espace and Sofibail applied to the Conseil d'État to have the approval decision of 8 January 1999 set aside.

15. When it examined the admissibility of the applications, the Conseil d'État concluded that the decisions taken in the name of Espace to institute legal proceedings were irregular since, contrary to the company's Articles of Association, the decisions were not taken by the management committee. In contrast, the decisions of Sofibail were correctly taken.

16. Since the tender had been made in the name of the Espace-Sofibail consortium but the decision of one of its members was irregular, the Conseil d'État considered the consequences for the admissibility of the proceedings.

17. By way of judgment dated 25 February 2004, the Conseil d'État decided to refer to the Court of Justice for a preliminary ruling the following questions:

'(1) Does Article 1 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 preclude a provision of national law, such as the first paragraph of Article 19 of the Laws on the Conseil d'État, consolidated on 12 January 1973, which is interpreted as requiring the members of a consortium without legal personality, which, as such, has participated in a procedure for the award of a public contract and has not been awarded that contract, to act together, in their capacity as associates or in their own names, in order to bring an action against the decision awarding that contract?

(2) Would the answer to Question 1 be different where the members of the consortium brought an action together, but the application of one of its members is inadmissible?

(3) Does Article 1 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 preclude a provision of national law, such as the first paragraph of Article 19 of the Laws on the Conseil d'État, consolidated on 12 January 1973, which is interpreted as prohibiting a member of such a consortium from bringing an action individually, either in its capacity as an associate, or in its own name, against the decision awarding the contract?'

IV — Appraisal

A — *General remarks*

18. All three questions essentially concern the Community law requirements regarding the admissibility of review proceedings brought by members of a group of contractors, and in particular in this case by members of a consortium under Belgian law.

19. In the light of the wording of the questions referred it must be recalled that the compatibility of national law with Community law cannot be the subject-matter of a reference for a preliminary ruling under Article 234 EC. Therefore the questions posed in this case must also be understood as concerning the interpretation of Community law.

20. Whilst the first and third questions concern the very principle of the capacity of individual members of a consortium to bring proceedings, the second question relates only to a specific factual situation, namely that in which, whilst all the members of a consortium have acted together in bringing proceedings, the application of one of its members is inadmissible.

21. The legal issues which are thereby raised must be distinguished, however, from the question — not at issue in the present case — whether and under which conditions a consortium must as a matter of Community law be allowed to invoke the review procedure provided for by the Directive.

22. From another additional point of view, however, the following appraisal must be restricted for procedural reasons to the specific facts of the case referred.

23. The main proceedings, that is to say the review procedure before the national court, are in fact concerned with the review of a decision taken by the contracting authority to award the contract, and therefore the successful tender. The answers given in respect of this reference for a preliminary ruling cannot without qualification be applied, however, to review procedures concerning other decisions of the contracting authority, such as for example the non-selection of operators to be tenderers, that is to say the failure to invite them to submit a tender, or the exclusion of tenders. It must also be recalled that the main proceedings concern the setting aside of a decision.

24. The answers proposed to the questions referred therefore have to be restricted to a set of circumstances such as those in the main proceedings. This means that it is perfectly conceivable that as regards a simple declaration of illegality and the availability of damages there might be other obligations under Community law.

25. In addition, the consortium which is at issue in the main proceedings is a creation of contract and — at least according to the case-file — does not possess as a matter of national law legal personality.

26. In that respect it may be noted, however, that the directives concerning the substantive rules on public procurement, old and new, explicitly provide for tenders to be submitted by 'groups of contractors' or 'groups of economic operators'. Thus Community law grants such candidates and tenderers certain rights, in particular the right to participate in a tendering procedure. From those Community law provisions it thus follows that consortia enjoy partial legal capacity.

27. Furthermore, within the scope of this preliminary reference the only question which must be examined is that concerning the unanimity rule, or in the alternative the denial to individual members of a consortium of capacity to bring proceedings. It is not necessary, however, to examine the question of compatibility of other existing or conceivable national provisions governing the use of review procedures by members of a consortium.

28. Finally, it must be observed that, should Community law require the Member States to allow a consortium to bring proceedings in its own right, then for the purposes of ensuring effective judicial protection it is no longer necessary for its members to have standing to bring proceedings. In those circumstances the legal issue raised by the present case is reduced to the question of who can act on behalf of a consortium which has standing to bring proceedings.

B — *The first and third questions*

29. Both the first and the third question take as their starting point the provision of national law applicable in the main proceedings according to which only all the members of a consortium may apply to have a decision of the contracting authority to award the contract reviewed, that is to say may bring legal proceedings contesting the decision, but no member of the consortium may act individually. It is appropriate, therefore, to consider the first and third questions together.

1. Starting point: 'interest' within the meaning of the Directive

30. The conditions set out in Article 1(3) of the Directive governing access to review procedures constitute a starting point. Under that provision, the Member States are to ensure 'that the review procedures are available, under detailed rules which the Member States may establish, at least to any person having or having had an interest in obtaining a particular public supply or public works contract and who has been or risks being harmed by an alleged infringement'.

31. The Court, in its case-law on capacity to bring proceedings, has repeatedly emphasised the importance, as a matter of Community law, of satisfying those conditions. [5]

32. The judgment in *Makedoniko* furnishes valuable assistance as regards this reference for a preliminary ruling concerning a consortium. In that case the Court held that it was in the light of the conditions laid down in Article 1(3) of the Directive that 'it [was] necessary to consider whether, ... the review procedures provided for by Directive 89/665 must be available to a consortium'. [6]

33. According to the Court, the decisive point is therefore whether the consortium can be regarded as having or having had an interest in obtaining the contract at issue in the main proceedings and as having been or at risk of being harmed by the contracting authority's decision for the purposes of Article 1(3) of Directive 89/665. [7]

34. This can be applied to the question at issue in the present proceedings, which do not concern the capacity to bring proceed-

5 — Case C-57/01 *Makedoniko Metro* [2003] ECR I-1091, at paragraph 65, and Case C-230/02 *Grossmann Air Service* [2004] ECR I-1791, paragraph 25.

6 — *Makedoniko Metro*, cited in footnote 5, paragraph 66.

7 — *Makedoniko Metro*, cited in footnote 5, paragraph 72.

ings of the consortium as such but that of its members.

35. Under the Directive, standing must be afforded, therefore, to a person who has an interest in obtaining the contract which is to constitute the subject-matter of a review procedure. As regards standing and the interest which is necessary in that connection, it must be added that not every interest is sufficient to render an application for review admissible.

36. This point must also be emphasised with regard to consortia. It is necessary to make this clarification since there can be a difference between the interests of the consortium and those of its members and between the interests of the individual members themselves, as moreover the Commission also emphasises.

37. It is true that the members of a consortium have an interest in the economic success of the consortium to which they belong. Nevertheless a member of a consortium is merely interested in the *consortium* being awarded the contract, not however in obtaining the contract *itself.*

38. The question of whether an interest *within the meaning* of Article 1(3) of the Directive exists must be evaluated according to those activities of the consortium which are relevant for the purposes of public procurement law.

39. Contrary to the Commission's argument, Member States are obliged as a matter of principle to grant standing to challenge a contract award procedure only to undertakings that have actually participated in that procedure. [8]

40. It is true that there are exceptions to this rule, however those only apply in particular cases: thus participation in a contract award procedure cannot be imposed as a requirement if the contracting authority has not even conducted a formal contract award procedure. [9] Equally, an undertaking has access to the remedies provided for by the Directive where the only reason for its non-participation was that the terms of the invitation to tender appeared to render its participation pointless. [10]

41. According to the Court's case-law, the requirement of participation in the contract

8 — *Grossmann Air Service*, cited in footnote 5, paragraph 27.

9 — Case C-26/03 *Stadt Halle* [2005] ECR I-1, paragraphs 34 and 41 et seq.

10 — *Grossmann Air Service*, cited in footnote 5, paragraph 28 et seq.

award procedure should be departed from therefore only in those cases in which participation was impossible or at the very least pointless. The decisive element is therefore that the cause of the impossibility of successful participation in a contract award procedure lies in the conduct of the contracting authority. Cases of *impossibility* must be distinguished, however, from those in which an undertaking does not even *desire* to participate in a contract award procedure. This also applies to the individual members of a consortium which do not *desire* to participate individually in a contract award procedure.

42. As regards those undertakings which combine to form a consortium since they cannot participate successfully on an individual basis it must be observed that the reason why they cannot do so does not lie in the conduct of the contracting authority.

43. The set of circumstances which forms the basis for the main proceedings can be distinguished, therefore, from cases of impossibility in which participation cannot be required in thus one further respect: there was participation and a bid was even tendered. It does not matter that this was the act of the consortium and not that of its members, since in the review procedure the members are not acting as undertakings unconnected to the bidder, that is to say unconnected to the consortium, but as its members. Therefore, since the individual undertakings rely upon the fact of their consortium membership, it must also be possible to attribute to them or to hold against them the consortium's conduct.

2. Substantive law considerations regarding capacity to bring proceedings

44. The procedural right to apply for review is derived, thus, from substantive participation in a contract award procedure, for example as a candidate, or as in the main proceedings as a tenderer.

45. Such parallelism is also apparent in *Makedoniko*, according to which 'in so far as a decision of a contracting authority adversely affects the rights conferred on a consortium by Community law in the context of a procedure for the award of a public contract, the consortium must be able to avail itself of the review procedures provided for by Directive 89/665'. [11]

11 — Case C-57/01, cited in footnote 5, at paragraph 73.

46. According to Community law, standing to bring proceedings must be accorded therefore to a person who also enjoys substantive rights. In the case of consortia, however, the rights conferred by the directives concerning the substantive law of public procurement are to be enjoyed by the consortia themselves. It is precisely the consortium which participates in the contract award procedure and appears as such in relation to third parties. Similarly, only it can constitute the addressee of a possible decision to award the contract.

47. Equally, the fact that national law also imposes upon the members of a consortium certain duties — possibly even towards third parties — may, as a matter of national procedural law, be decisive. Thus the principle that substantive rights and duties run parallel to remedies may acquire significance also under national law.

48. From the Community law perspective, the questions referred must be answered therefore in such a manner as to ensure that the Directive's aim of enforcing the rights which can be derived from the directives concerning the substantive law of public procurement is taken into account.

49. If that principle is applied to the main proceedings it leads then to the conclusion that the Directive provides remedies only for *tenderers*, in this case, therefore, the consortium. The main proceedings illustrate the typical situation concerning consortia, that is to say, that on account of their specialisation their members would be wholly unable to carry out the complete contract. It must be emphasised that they furthermore did not intend to do so.

50. The principle according to which rights run parallel to remedies would therefore tend to preclude the conclusion that under the Directive individual members as well should also be accorded standing.

51. It is possible to deduce from the Directive therefore only that the consortium as such has standing. From this it in turn follows that, as a matter of Community law, individual members of a consortium acting on their *own* behalf do not enjoy the right to seek review of the decision to award a contract.

52. It therefore remains to be clarified whether individual members of a consortium are at least permitted to seek review in the name of the consortium.

53. In that respect, as is true with regard to all national procedural rules, it is necessary to recall the principles of equivalence and effectiveness.

54. In respect of remedies provided for in the field of public procurement, those principles of Community law have even been expressly established in Article 1 of the Directive. As regards the principle of effectiveness, the Member States are required by Article 1(1) of the Directive to ensure that decisions taken by contracting authorities may be reviewed *effectively* and, in particular, as rapidly as possible. The standard resulting from the principle of effectiveness applicable here is, however, not an absolute one.

55. Thus the Court emphasised in a case concerning remedies in the field of public procurement that: '... for the purpose of applying the principle of effectiveness, each case which raises the question whether a national procedural provision renders application of Community law impossible or excessively difficult must be analysed by reference, in particular, to the role of that provision in the procedure, its progress and its special features, viewed as a whole'. [12]

56. A further principle was emphasised by the Court in *Fritsch*:

'It should be added that the fact that Article 1(3) of Directive 89/665 expressly allows Member States to determine the detailed rules according to which they must make the review procedures available to any person having or having had an interest in obtaining a particular public contract and who has been or risks being harmed by an alleged infringement none the less does not authorise them to give the term "interest in obtaining a public contract" an interpretation which may limit the effectiveness of that directive.' [13]

57. In *Grossmann* the Court even acknowledged the lawfulness in principle of national rules which define more narrowly the concept of 'interest' thus restricting the ability to bring proceedings:

'In those circumstances, a refusal to acknowledge the interest in obtaining the contract in question and, therefore, the right of access to the review procedures provided for by Directive 89/665 of a person who has not participated in the contract award procedure, or sought review of the decision of the contracting authority laying down the specifications of the invitation to tender, does

12 — Case C-327/00 *Santex* [2003] ECR I-1877, paragraph 56; see also Case C-312/93 *Peterbroeck* [1995] ECR I-4599, paragraph 14.

13 — Case C-410/01 [2003] ECR I-6413, paragraph 34.

not impair the effectiveness of that directive.'[14]

58. From that case-law it can therefore be deduced that only the consortium enjoys the necessary standing to bring proceedings but not an individual member.

3. Assessment of the effects of the unanimity rule

59. The effects of the unanimity rule must also be assessed in the light of those principles of equivalence and effectiveness.

60. That applies first of all to the effect advanced by the Commission according to which the unanimity rule reduces the possibilities of applying for a review procedure, that restriction being all the more serious since remedies in the field of public procurement need to be granted rapidly.

61. Tenderers other than consortia are also required to fulfil comparable procedural conditions and, in particular, to ensure that they are represented in a manner which is appropriate to their legal form. On closer examination, therefore, at issue is only the question of the internal decision-making process in respect of consortia, as is also required of other tenderers.

62. Moreover, the mere fact that the unanimity rule can result in the ability of the consortium to defend its interests being dependent on an individual member does not of itself constitute an infringement of the abovementioned principles. The fact that the individual members of a consortium must act together does not constitute a special feature of procedural law; that is a requirement even before they participate in a contract award procedure and particularly so well before they submit a tender, especially when, for example, they form a consortium.

63. The fact that the interests of the individual members may diverge can, when the unanimity rule is applied, it is true, make the lodging of a review application more difficult. It should not be overlooked however that the majority of the members may have different interests to those of individual members, including as far as the question of review is concerned.

14 — Case C-230/02, cited in footnote 5, paragraph 39.

64. In the Commission's view, the unanimity rule forces groups of contractors to adopt a particular legal form. On that point it must be observed that such rule is more likely to result in the avoidance of a particular legal form.

65. Moreover, every group of contractors has to conclude a framework for their cooperation, usually in the form of an association agreement. Contrary to the Commission's view, that cannot be regarded as constituting an infringement of Article 21 of Directive 93/37. It does not in fact require the adoption of any particular legal form. The decision to form a consortium is deliberate and is also taken in the knowledge of the resulting advantages and disadvantages.

66. Such an agreement may also govern the exercise of the right to seek review. The advantages which result to the individual members of the consortium from such an agreement cannot, however, be regarded as a requirement to adopt a particular legal form.

67. The Commission's final argument, that the unanimity rule already has a dissuasive effect even at the stage of forming a consortium overlooks, however, the fact that, given such knowledge of possible difficulties in obtaining remedies, precautionary measures may be adopted in the association agreement. Such measures may provide, for example, for representation by an individual member or for the adoption of a particular majority rule.

68. Likewise the unanimity rule cannot be regarded as discriminating against other legal forms of undertaking. Even tenderers who do not assume the form of a consortium must observe the rules of law relating to undertakings and procedure which are applicable to their case. For example, that includes observing the rules according to which companies may only be represented by those bodies authorised to do so. The features of a consortium merely demonstrate the fact that every form of legal organisation is characterised by particular attributes.

69. The disabling effect of the unanimity rule to which the Commission has referred in several respects can be avoided by the national legislature, as I have already explained, by rendering the unanimity rule as merely a default provision. In such cases alternative solutions could be reached by inserting appropriate provisions into the association agreement or, where appropriate, by a resolution of the members taken directly on the basis of the relevant provisions of national company law.

70. In the present case it has been pointed out on several occasions that it is possible to agree to a majority rule or to provide for representation by one member, for example, according to the national law applicable in the main proceedings in the form of a 'mandat'.

71. It would nevertheless constitute an impairment of the easier access to effective legal protection which the Community legislature sought to achieve if, for example, national law contained provisions on representation as a result of which consortia from other Member States were disadvantaged or which are in practice impossible to fulfil.

72. The fact that in certain Member States individual members of a consortium are also permitted to seek review does not alter the fact that this is not required by the Directive. Admittedly, Member States are permitted as a matter of principle to go beyond the minimum requirements of the Directive. [15] However the question would then arise whether such a rule of national law which, on first impression, appears generous, since it is favourable to tenderers, was compatible with Community law. That question is not however the subject-matter of the present reference for a preliminary ruling.

73. Finally, the fact that the other members of a consortium must also be protected tends, as a matter of Community law, to preclude an obligation on Member States to accord individual members standing to bring proceedings.

74. To accord individual members standing to bring proceedings could, for example, result in a situation in which even a majority of the members are, contrary to their wishes, compelled to enter into a review procedure and on being successful are forced into a new or continued contract award procedure in which they are possibly no longer interested since, for example, they have in the intervening period already concluded other contracts.

75. The point does not have to be examined here whether, on the other hand, Community law prevents an individual member from being accorded standing to bring proceedings. In the present case it was merely necessary to examine whether Community law precludes a specific national prohibition or, putting it another way, whether it permits standing to be restricted to the members of consortium acting together.

76. Community law does not therefore in principle require Member States to accord individual members of a consortium standing to bring review proceedings in their own names. Nor does Community law require individual members to be permitted to bring review proceedings in the name of the

15 — Case C-315/01 *GAT* [2003] ECR I-6351, paragraph 45.

consortium. In any event there is no such requirement in respect of those Member States whose national law on this point is not mandatory, to the extent that it permits consortia, that is to say through their members, to derogate from the rule, for example, already by virtue of the association agreement or — later — by resolution.

77. The reply to the first and third questions must therefore be that Article 1 of Directive 89/665 is to be interpreted as not precluding a provision of national law according to which the members of a consortium without legal personality, which, as such has participated in a procedure for the award of a public contract and has not been awarded the contract, may only acting together — in their capacity as associates or in their own names — bring proceedings against the decision awarding that contract, and according to which an individual member of such a consortium may not, in its capacity as associate or its own name, seek review of the decision to award the contract. This is subject to the condition that the provision of national law does not render the application of Community law impossible or excessively difficult. That is the case if national law permits the members of the consortium to reach alternative solutions.

C — *The second question*

78. The second question concerns standing to bring proceedings in a particular set of circumstances, that is to say where, although the members of a consortium have acted together in bringing proceedings, the application of one of its members is, however, inadmissible.

79. The legal question is thereby raised whether in respect of the national unanimity rule it is necessary as a matter of Community law to differentiate according to the reason for the lack of unanimity.

80. According to the Commission and to FOREM, albeit for different reasons, the answer should be in the negative.

81. As Austria correctly emphasises, the second question must be answered in the light of the principles of equivalence and effectiveness or, as set out above, according to the principle of rapid and effective remedies expressly laid down in Article 1 of the Directive.

82. Those principles could be infringed in the context of particular factual situations or in respect of particular national provisions. This reference for a preliminary ruling concerns the limits imposed by both those principles on the effects of the application of the unanimity rule in a set of circumstances such as that in the case in the main proceedings.

83. When assessing the lawfulness of a national procedural rule in the light of both principles, as the judgment in *Santex* [16] clearly demonstrates and in contrast to *Universale Bau*, [17] the factual circumstances of the specific case must also be taken into consideration. Thus, as a matter of Community law, the unlawfulness of a provision which on first inspection appears to comply with Community law may only emerge in particular sets of circumstances.

84. In a reference for a preliminary ruling under Article 234 EC the Court must restrict itself, however, to answering the questions referred rather than delivering a general legal opinion. It is therefore unnecessary to examine and assess in the light of Community law such situations which differ from those of the main proceedings.

85. The national rule at issue, which requires compliance with the provisions concerning internal decision-making processes in circumstances such as those prevailing in the main proceedings, does not in any event infringe the requirement for rapid and effective remedies.

86. The reply to the second question must therefore be that the answer to the first question does not differ where, although the members of the consortium acted together in bringing proceedings, the application of one of its members is, however, inadmissible.

16 — Case C-327/00, cited in footnote 12.

17 — Case C-470/99 [2002] ECR I-11617.

V — Conclusion

87. In the light of the foregoing I propose that the Court should answer the questions as follows:

(1) Article 1 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 is to be interpreted as not precluding a rule of national law according to which:

— the members of a consortium without legal personality, which, as such has participated in a procedure for the award of a public contract and has not been awarded the contract may only acting together — in their capacity as associates or in their own names — bring proceedings against the decision awarding that contract;

— an individual member of such a consortium may not, in its capacity as associate or in its own name, seek review of the decision to award the contract.

This is subject to the condition that the provision of national law does not render the application of Community law impossible or excessively difficult. Those principles are in any event complied with if national law permits the members of the consortium to reach alternative solutions.

(2) The answer to the question does not differ where, although the members of the consortium acted together in bringing proceedings, the application of one of its members is, however, inadmissible under national law.