JUDGMENT OF THE COURT (Fifth Chamber)

22 May 2003 *

In Case C-18/01,

REFERENCE to the Court under Article 234 EC by the Kilpailuneuvosto (Finland) for a preliminary ruling in the proceedings pending before that court between

Arkkitehtuuritoimisto Riitta Korhonen Oy,

Arkkitehtitoimisto Pentti Toivanen Oy,

Rakennuttajatoimisto Vilho Tervomaa

and

Varkauden Taitotalo Oy,

on the interpretation of Article 1(b) of 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),

* Language of the case: Finnish.

THE COURT (Fifth Chamber),

composed of: C.W.A. Timmermans (Rapporteur), President of the Fourth Chamber, acting for the President of the Fifth Chamber, D.A.O. Edward, P. Jann, S. von Bahr and A. Rosas, Judges,

Advocate General: S. Alber,
Registrar: M.-F. Contet, Principal Administrator,

after considering the written observations submitted on behalf of:

— Varkauden Taitotalo Oy, by H. Tuure, asianajaja,

— the Finnish Government, by T. Pynnä, acting as Agent,

— the French Government, by G. de Bergues and S. Pailler, acting as Agents,

— the Austrian Government, by M. Fruhmann, acting as Agent,

— the Commission of the European Communities, by M. Nolin and M. Huttunen, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Finnish Government and the Commission at the hearing on 16 May 2002,

after hearing the Opinion of the Advocate General at the sitting on 11 July 2002,

gives the following

Judgment

1 By order of 14 December 2000, received at the Court on 16 January 2001, the Kilpailuneuvosto (Competition Council) referred to the Court for a preliminary ruling under Article 234 EC three questions on the interpretation of Article 1(b) of 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).

2 Those questions were raised in proceedings between Arkkitehtuuritoimisto Riitta Korhonen Oy and Arkkitehtitoimisto Pentti Toivanen Oy and Rakennuttajatoimisto Vilho Tervomaa (hereinafter referred to together as 'Korhonen and Others') and Varkauden Taitotalo Oy ('Taitotalo') concerning the latter's decision not to accept the tender they had submitted in connection with a contract for the supply of design and construction services for a building project.

Legal context

Community legislation

3 Article 1(b) of Directive 92/50 provides as follows:

'For the purposes of this Directive:

...

(b) *contracting authorities* shall mean the State, regional or local authorities, bodies governed by public law, associations formed by one or more of such authorities or bodies governed by public law.

Body governed by public law means any body:

— established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and

— having legal personality and

— financed, for the most part, by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law.

The lists of bodies or of categories of such bodies governed by public law which fulfil the criteria referred to in the second subparagraph of this point are set out in Annex I to Directive 71/305/EEC. These lists shall be as exhaustive as possible and may be reviewed in accordance with the procedure laid down in Article 30b of that Directive.'

National legislation

4 Directive 92/50 was transposed into Finnish law by the Julkisista hankinnoista annettu laki (Law on public procurement) 1505/1992 of 23 December 1992 ('Law 1505/1992').

5 That law contains, in Paragraph 2, a definition of a contracting entity (contracting authority) which is very similar to that in Article 1(b) of Directive

92/50. Under Paragraph 2(1)(2) of Law 1505/1992, legal persons 'regarded as belonging to the public administration' are 'contracting entities' within the meaning of that law. Paragraph 2(2) says that that is considered to be the case where a legal person is established to look after tasks in the general interest with no industrial or commercial character and either is financed primarily by a public authority, or is under its supervision, or has an administrative, managerial or supervisory board over half of whose members are appointed by a public authority.

The main proceedings and the questions referred for a preliminary ruling

6 Taitotalo is a limited company whose capital is wholly owned by the town of Varkaus (Finland), and whose objects are to buy, sell and lease real property and shares in property companies, and to organise and supply property maintenance services and other related services needed for the management of those properties and shares. The company's board has three members, who are officials of the town of Varkaus, appointed by the general meeting of the company's shareholders, at which the town has 100% of the voting rights. According to the information provided by the national court, the company's foundation document was signed on 21 January 2000 and it was entered in the register of commerce on 6 April 2000.

7 Following the town of Varkaus's decision to create on its territory a technological development centre under the name Tyyskän osaamiskeskus ('Tyyskä Skills Centre'), Taitotalo is arranging for several office blocks and a multi-storey car park to be built. Taitotalo's stated intention is to buy the land from the town of Varkaus once the site has been parcelled out, and then to lease the newly constructed buildings to firms in the technology sector.

8 To carry out the project, recourse was had to construction, marketing and coordination services from Keski-Savon Teollisuuskylä Oy ('Teollisuuskylä'). According to its statutes, the objects of Teollisuuskylä — which is owned by a regional development company most of whose shares are held by the town of Varkaus and other municipalities in the central Savo region — are to build, acquire and manage premises for industrial and commercial use and properties primarily for the use of undertakings to which they are transferred at cost price.

9 By a first call for tenders of 6 July 1999, Teollisuuskylä asked for bids for the supply of design and construction services for the first stage of the building project described above, relating to construction of the Tyyskä 1 building, intended for the use of Honeywell-Measurex Oy, and the Tyyskä 2 building for the use of several smaller undertakings. After the period for bidding had ended, at the end of August 1999, however, Teollisuuskylä informed the bidders that because of changes to the ownership basis of the property company to be set up — Taitotalo — the design and construction of the project had to be the subject of an open competition published in the *Official Journal of the European Communities*.

10 After amending the contract documents, Teollisuuskylä therefore, by a second call for tenders of 4 September 1999, started a new procedure for awarding the contract for design and construction services for the first stage of the project. The main contractors were stated to be the town of Varkaus and Teollisuuskylä. An invitation to tender was also published in *Virallinen lehti* (Official Journal of the Republic of Finland) No 35 of 2 September 1999 under the heading 'suunnittelukilpailu' (design contest). The notice gave the contracting authority as the town of Varkaus, on behalf of the property company to be set up.

11 Korhonen and Others submitted tenders in this new procedure, but were informed by letter from Taitotalo of 6 April 2000 that JP-Terasto Oy and the

group led by Arkkitehtitoimisto Pekka Paavola Oy had been chosen to design and construct the Tyyskä 1 and Tyyskä 2 buildings respectively.

12 Since they considered that the Finnish public procurement legislation had not been complied with, Korhonen and Others brought applications before the Kilpailuneuvosto on 17 and 26 April 2000, seeking either for the award to be set aside with damages being awarded in the alternative, or merely for damages.

13 Before the Kilpailuneuvosto, Taitotalo submitted that the applications of Korhonen and Others should be dismissed as inadmissible, on the ground that it was not a contracting entity within the meaning of Paragraph 2 of Law 1505/1992. Relying in particular on a decision of the Korkein hallinto-oikeus (Supreme Administrative Court) in a similar case, Taitotalo submitted that it had not been established to look after tasks in the general interest with no industrial or commercial character, and that in any event the amount of public support granted to the building project in question was less than half the total value of the operation.

14 Since it considered that the outcome of the dispute before it depended on the interpretation of Community law, in particular in view of the common practice in Finland of public authorities setting up, owning and managing limited companies which do not themselves aim to make a profit but intend to create favourable conditions for the pursuit of commercial or industrial activities on the territory of those authorities, the Kilpailuneuvosto — which from 1 March 2002 became the Markkinaoikeus (Market Court) — decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'1. Is a share company which a town owns and in which the town exercises control to be regarded as a contracting authority within the meaning of

Article 1(b) of Council Directive 92/50/EEC relating to the coordination of procedures for the award of public service contracts, where the company acquires design and construction services for a building lot comprising offices to be leased to undertakings?

2. Does it affect the decision on the point that the town's building project endeavours to create the conditions for business activity to be carried on in the town?

3. Does it affect the decision on the point that the offices to be built are leased to one undertaking only?'

Admissibility of the questions

15 On the basis of the Court's case-law according to which, in order to enable the Court to provide an interpretation of Community law which will be of use to the national court, that court must define the factual and legal context of the questions it is asking or, at the very least, explain the factual circumstances on which they are based (see, *inter alia*, Joined Cases C-115/97 to C-117/97 *Brentjens'* [1999] ECR I-6025, paragraph 38), the Commission voices doubts as to the admissibility of the questions referred for a preliminary ruling, on the ground that the order for reference does not make it possible to identify the provisions on the basis of which the two award procedures were initiated and those which were not applied in the main proceedings, and that the order also fails to disclose the identity of the entity which, at least formally, carried out the public procurement procedure.

16 The French Government observes for its part that, with respect to the second call for tenders, the order for reference mentions the town of Varkaus both as contracting authority and as main contractor. In those circumstances, the Government doubts the need for a reference, in that, first, at the time of publication of that call for tenders Taitotalo did not yet have the legal personality required by Directive 92/59 and, second, the town of Varkaus as a local authority is subject to the provisions of the directive in any event.

17 The French Government further submits that, contrary to what Teollisuuskylä told the bidders in August 1999, there was no publication in the *Official Journal of the European Communities* of the second invitation to tender.

18 Without there being any need to consider here whether or not the invitation to tender for the contract at issue in the main proceedings had to be the subject of publication in the *Official Journal of the European Communities*, the French Government's argument that there was no publication of the second invitation to tender must be rejected at the outset, since, as the Finnish Government stated at the hearing, that invitation to tender was published in supplement No 171 to the *Official Journal of the European Communities* of 3 September 1999.

19 As regards the French Government's doubts as to the need for the questions referred and the Commission's objections concerning the lack of detail as to the factual and legal context of the main proceedings, it should be recalled that, according to settled case-law, it is solely for the national courts before which actions are brought, and which must bear the responsibility for the subsequent judicial decision, to determine in the light of the special features of each case both the need for a preliminary ruling in order to enable them to deliver judgment and the relevance of the questions which they submit to the Court. Consequently, since the questions referred involve the interpretation of Community law, the Court is, in principle, obliged to give a ruling (see, *inter alia*, Case C-379/98

PreussenElektra [2001] ECR I-2099, paragraph 38; Case C-390/99 *Canal Satélite Digital* [2002] ECR I-607, paragraph 18; and Case C-373/00 *Adolf Truley* [2003] ECR I-1931, paragraph 21).

20 Moreover, it also follows from that case-law that the Court can refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see *PreussenElektra*, paragraph 39, *Canal Satélite Digital*, paragraph 19, and *Adolf Truley*, paragraph 22).

21 In the present case, it is not obvious that the questions referred by the national court fall within one of those hypotheses.

22 First, it cannot be maintained that the interpretation of Community law which is sought bears no relation to the actual facts or purpose of the main proceedings or is hypothetical, since the admissibility of the main proceedings depends in particular on the proper extent of the term 'body governed by public law' in Article 1(b) of Directive 92/50.

23 Second, the national court has furnished the Court, albeit in summary fashion, with the material necessary to enable it to give a useful answer to the questions referred, in particular by stating in its account of the factual context of the main proceedings that the notice published in *Virallinen lehti* of 2 September 1999 mentioned as contracting authority the town of Varkaus acting 'on behalf of the property company to be set up'.

24 In those circumstances, it cannot be excluded that Taitotalo, although lacking legal personality at the time of publication of the second call for tenders, played a decisive part in the award procedure at issue in the main proceedings.

25 It should also be noted that, in reply to a question put by the Court at the hearing, the Finnish Government explained that, under Finnish law, the founders of a company can act on behalf of the company before it is entered in the register of commerce, and on the date when the company is so registered it takes over all the previous commitments entered into on its behalf.

26 Such appears to have been the case in the main proceedings, since the national court observes that Taitotalo was entered in the register of commerce on 6 April 2000 and it was on that date that Korhonen and Others were informed by that company that their tenders had not been selected.

27 In those circumstances, it cannot be excluded that Taitotalo took over, on 6 April 2000, all the previous commitments entered into on its behalf by the town of Varkaus, and may on that basis be regarded as responsible for the award procedure at issue in the main proceedings.

28 In the light of the foregoing, the questions referred by the Kilpailuneuvosto must be declared admissible.

The questions referred for a preliminary ruling

29 By its questions to the Court, the national court seeks clarification of the term 'body governed by public law' within the meaning of Article 1(b) of Directive 92/50, so as to be able to decide, in the main proceedings, whether Taitotalo should be regarded as a contracting authority.

30 According to the first subparagraph of Article 1(b) of Directive 92/50, the State, regional or local authorities, bodies governed by public law, and associations formed by one or more of such authorities or bodies governed by public law are 'contracting authorities'.

31 The second subparagraph of Article 1(b) of Directive 92/50 defines a 'body governed by public law' as any body established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, with legal personality and closely dependent, by its method of financing, management or supervision, on the State, regional or local authorities, or other bodies governed by public law.

32 As the Court has consistently held (see, *inter alia*, Case C-360/96 *BFI Holding* [1998] ECR I-6821, paragraph 29; Joined Cases C-223/99 and C-260/99 *Agorà and Excelsior* [2001] ECR I-3605, paragraph 26; and *Adolf Truley*, paragraph 34), the conditions set out in that provision are cumulative, so that in the absence of any one of them an entity may not be classified as a body governed by public law, and hence as a contracting authority within the meaning of Directive 92/50.

33 Since it is not in dispute that Taitotalo is owned and managed by a local authority and — at least from its date of entry in the register of commerce, 6 April 2000 — has legal personality, the national court's questions must be understood as relating solely to whether that company was established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character.

The first and second questions

34 By its first two questions, which should be examined together, the national court essentially asks whether a limited company established, owned and managed by a regional or local authority may be regarded as meeting a specific need in the general interest, not having an industrial or commercial character, where that company's activity consists in acquiring services with a view to the construction of premises intended for the exclusive use of private undertakings, and whether the assessment of whether that condition is satisfied would be different if the building project in question were intended to create favourable conditions on that local authority's territory for the exercise of business activities.

Observations submitted to the Court

35 Taitotalo and the French Government consider that those two questions should be answered in the negative, as Taitotalo's activity is not intended to meet needs in the general interest and/or in any event has an industrial or commercial character.

36 Taitotalo submits that its sole object is to promote the conditions for the exercise of the activities of specific undertakings, not for the exercise generally of economic activity in the town of Varkaus, while the fact that it is owned and financed by a contracting authority is of no relevance, since, in the case in the main proceedings, it meets industrial or commercial needs. Taitotalo states, in particular, that it acquired at market price the land needed for the building works at issue in the main proceedings and that the financing of the project will be taken in hand essentially by the private sector, by means of bank loans secured by mortgages.

37 In reliance on the Court's judgment in Case C-44/96 *Mannesmann Anlagenbau Austria and Others* [1998] ECR I-73, in which, it says, the Court was concerned to ascertain whether the activity of the entity at issue in that case — the Austrian State printing works — came under an essential prerogative of the State, the French Government considers for its part that the leasing of premises for industrial or commercial use cannot in any case be regarded as within the prerogatives which by their very nature are part of the exercise of public powers. Moreover, because of its commercial character, this activity cannot be compared with those at issue in *BFI Holding* and Case C-237/99 *Commission* v *France* [2001] ECR I-939, namely the collection and treatment of household waste and the construction of social housing.

38 In the Finnish Government's view, on the other hand, Taitotalo's activity typically appears among those which respond to a need in the general interest with no industrial or commercial character. First, Taitotalo's primary aim is not to generate profits by its activity but to create favourable conditions for the development of economic activities on the territory of the town of Varkaus, which fits in perfectly with the functions which regional and local authorities may assume by virtue of the autonomy guaranteed to them by the Finnish constitution. Second, the objective of Directive 92/50 would be compromised if such a company were not regarded as a contracting authority within the meaning of the directive, as municipalities might in that case by tempted to establish, in their traditional sphere of activity, other undertakings whose contracts would be outside the scope of the directive.

39 Finally, while not excluding the possibility that Taitotalo's activity may meet a need in the general interest because of the stimulus it gives to trade and the development of business activities on the territory of the town of Varkaus, the Austrian Government and the Commission state for their part that, in view of the incomplete information available, they are unable to assess the extent to which that need has an industrial or commercial character. They therefore invite the national court to perform that assessment itself, examining in particular the competition position of Taitotalo and whether it bears the risks associated with its activity.

Findings of the Court

40 The Court has already held that the second subparagraph of Article 1(b) of Directive 92/50 draws a distinction between needs in the general interest not having an industrial or commercial character and needs in the general interest having an industrial or commercial character (see, *inter alia*, *BFI Holding*, paragraph 36, and *Agorà and Excelsior*, paragraph 32). To give a useful answer to the questions put, it must first be ascertained whether activities such as those at issue in the main proceedings in fact meet needs in the general interest and then, if necessary, it must be determined whether such needs have an industrial or commercial character.

41 As regards the question whether the activity at issue in the main proceedings meets a need in the general interest, it appears from the order for reference that Taitotalo's principal activity consists in buying, selling and leasing properties and organising and supplying property maintenance services and other related services needed for the management of those properties. The operation carried out by Taitotalo in the main proceedings consists, more precisely, in acquiring design and construction services in connection with a building project relating to the construction of several office blocks and a multi-storey car park.

42 In that that operation follows from the town of Varkaus's decision to create a technological development centre on its territory, and Taitotalo's stated intention is to buy the land from the town once the site has been parcelled out, and to make the newly constructed buildings available to firms in the technology sector, its activity is indeed capable of meeting a need in the general interest.

43 In this respect, it may be recalled that, on being asked whether a body whose objects were to carry on and facilitate any activity concerned with the organisation of trade fairs, exhibitions and conferences could be regarded as a body governed by public law within the meaning of Article 1(b) of Directive 92/50, the Court held that activities relating to the organisation of such events meet needs in the general interest, in that an organiser of those events, in bringing together manufacturers and traders in one geographical location, is not acting solely in the individual interest of those manufacturers and traders, who are thereby afforded an opportunity to promote their goods and merchandise, but is also providing consumers who attend the events with information that enables them to make choices in optimum conditions. The resulting stimulus to trade may be considered to fall within the general interest (see *Agorà and Excelsior*, paragraphs 33 and 34).

44 Similar considerations may be put forward *mutatis mutandis* with respect to the activity at issue in the main proceedings, in that it is undeniable that, in acquiring design and construction services in connection with a building project relating to the construction of office blocks, Taitotalo is not acting solely in the individual interest of the undertakings directly concerned by that project but also in that of the town of Varkaus.

45 Activities such as those carried on by Taitotalo in the case in the main proceedings may be regarded as meeting needs in the general interest, in that they are likely to give a stimulus to trade and the economic and social development of the local authority concerned, since the location of undertakings on the territory

of a municipality often has favourable repercussions for that municipality in terms of creation of jobs, increase of tax revenue and improvement of the supply and demand of goods and services.

46 A more difficult question, on the other hand, is whether such needs in the general interest have a character which is not industrial or commercial. While the Finnish Government submits that those needs have no industrial or commercial character, in that Taitotalo aims not so much to make a profit as to create favourable conditions for the location of undertakings on the territory of the town of Varkaus, Taitotalo puts forward the contrary argument, on the ground that it provides services precisely for commercial undertakings and that the financing of the building project in question is borne essentially by the private sector.

47 According to settled case-law, needs in the general interest, not having an industrial or commercial character, within the meaning of Article 1(b) of the Community directives relating to the coordination of procedures for the award of public contracts are generally needs which are satisfied otherwise than by the availability of goods and services in the market place and which, for reasons associated with the general interest, the State chooses to provide itself or over which it wishes to retain a decisive influence (see, *inter alia*, *BFI Holding*, paragraphs 50 and 51, *Agorà and Excelsior*, paragraph 37, and *Adolf Truley*, paragraph 50).

48 In the present case, it cannot be excluded that the acquisition of services intended to promote the location of private undertakings on the territory of a particular local authority may, for the reasons referred to in paragraph 45 above, be regarded as meeting a need in the general interest whose character is not industrial or commercial. In assessing whether or not such a need in the general interest is present, account must be taken of all the relevant legal and factual elements, such as the circumstances prevailing at the time when the body concerned was established and the conditions under which it exercises its activity (see, to that effect, *Adolf Truley*, paragraph 66).

49 In particular, it must be ascertained whether the body in question carries on its activities in a situation of competition, since the existence of such competition may, as the Court has previously held, be an indication that a need in the general interest has an industrial or commercial character (see, to that effect, *BFI Holding*, paragraphs 48 and 49).

50 However, it also follows from the wording of that judgment that the existence of significant competition does not of itself permit the conclusion that there is no need in the general interest not having an industrial or commercial character (see *Adolf Truley*, paragraph 61). The same applies to the fact that the body in question aims specifically to meet the needs of commercial undertakings. Other factors must be taken into account before reaching such a conclusion, in particular the question of the conditions in which the body in question carries on its activities.

51 If the body operates in normal market conditions, aims to make a profit, and bears the losses associated with the exercise of its activity, it is unlikely that the needs it aims to meet are not of an industrial or commercial nature. In such a case, the application of the Community directives relating to the coordination of procedures for the award of public contracts would not be necessary, moreover, because a body acting for profit and itself bearing the risks associated with its activity will not normally become involved in an award procedure on conditions which are not economically justified.

52 According to settled case-law, the purpose of those directives is to avert both the risk of preference being given to national tenderers or applicants whenever a contract is awarded by the contracting authorities and the possibility that a body financed or controlled by the State, regional or local authorities or other bodies governed by public law may choose to be guided by other than economic considerations (see, in particular, Case C-380/98 *University of Cambridge* [2000] ECR I-8035, paragraph 17; Case C-470/99 *Universale-Bau and Others* [2002] ECR I-11617, paragraph 52; and *Adolf Truley*, paragraph 42).

53 In reply to a written question put by the Court, the Finnish Government stated at the hearing that although, from a legal point of view, there are few differences between companies such as Taitotalo and limited companies owned by private operators, in that they bear the same economic risks as the latter and may similarly be declared bankrupt, the regional and local authorities to which they belong rarely allow such a thing to happen and will, if appropriate, recapitalise those companies so that they can continue to look after the tasks for which they were established, essentially the improvement of the general conditions for the pursuit of economic activity in the local authority area in question.

54 In reply to a question put by the Court at the hearing, the Finnish Government further stated that, while it is not impossible that the activities of companies such as Taitotalo may generate profits, the making of such profits can never constitute the principal aim of such companies, since under Finnish law they must always aim primarily to promote the general interest of the inhabitants of the local authority area concerned.

55 In such conditions, and having regard to the fact mentioned by the national court that Taitotalo received public funding for carrying out the building project at issue in the main proceedings, it appears probable that an activity such as that pursued by Taitotalo in this case meets a need in the general interest not having an industrial or commercial character.

56 It is nevertheless for the national court, the only one to have detailed knowledge of the facts of the case, to assess the circumstances which prevailed when that body was set up and the conditions in which it carries on its activity, including in particular whether it aims at making a profit and bears the risks associated with its activity.

57 As to the Commission's observation that it cannot be excluded that the activity at issue in the main proceedings represents only a minor part of Taitotalo's activities, that fact, even were it to be established, would be of no relevance to the outcome of the main proceedings, in so far as that company continues to look after needs in the general interest.

58 According to settled case-law, the status of a body governed by public law is not dependent on the relative importance, within that body's activity, of the meeting of needs in the general interest not having an industrial or commercial character (see *Mannesmann Anlagenbau Austria and Others*, paragraphs 25, 26 and 31; *BFI Holding*, paragraphs 55 and 56; and *Adolf Truley*, paragraph 56).

59 In the light of the above considerations, the answer to the first and second questions must be that a limited company established, owned and managed by a regional or local authority meets a need in the general interest, within the meaning of the second subparagraph of Article 1(b) of Directive 92/50, where it acquires services with a view to promoting the development of industrial or commercial activities on the territory of that regional or local authority. To determine whether that need has no industrial or commercial character, the national court must assess the circumstances which prevailed when that company was set up and the conditions in which it carries on its activity, taking account in particular of the fact that it does not aim primarily at making a profit, the fact that it does not bear the risks associated with the activity, and any public financing of the activity in question.

The third question

60 By its third question, the national court essentially asks whether the fact that the offices to be constructed are leased only to a single undertaking is capable of calling into question the lessor's status of a body governed by public law.

61 It suffices to state that it is clear from the answer to the first two questions that such a circumstance does not in principle prevent the lessor of the offices to be built from being classified as a body governed by public law, since, as the Advocate General observes in point 92 of his Opinion, the general interest is not measured by the number of direct users of an activity or service.

62 First, it is undeniable that the location of a single undertaking on the territory of a regional or local authority may likewise give a stimulus to trade and bring about favourable economic and social repercussions for that local authority and for all its inhabitants, since the location of that undertaking may *inter alia* act as a catalyst and stimulate the location of other undertakings in the region concerned.

63 Second, that interpretation is also consistent with the purpose of Directive 92/50, which, according to the 20th recital in its preamble, is intended *inter alia* to eliminate practices that restrict competition in general and participation in contracts by other Member States' nationals in particular. As the Finnish Government has observed, to accept that a body may fall outside the scope of that directive solely because the activity it carries on benefits one company only would amount to disregarding the very purpose of the directive, since, to avoid the rules it lays down, it would suffice for a company such as Taitotalo to maintain that the premises to be constructed were intended to be let to a single undertaking, which could then, as soon as the transaction were completed, transfer the premises to other undertakings.

64 In the light of the above considerations, the answer to the third question must therefore be that the fact that the premises to be constructed are leased only to a single undertaking is not capable of calling into question the lessor's status of a body governed by public law, where it is shown that the lessor meets a need in the general interest not having an industrial or commercial character.

Costs

65 The costs incurred by the Finnish, French and Austrian Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Kilpailuneuvosto by order of 14 December 2000, hereby rules:

1. A limited company established, owned and managed by a regional or local authority meets a need in the general interest, within the meaning of the second subparagraph of Article 1(b) of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, where it acquires services with a view to promoting the development of industrial or commercial activities on the territory of that

regional or local authority. To determine whether that need has no industrial or commercial character, the national court must assess the circumstances which prevailed when that company was set up and the conditions in which it carries on its activity, taking account in particular of the fact that it does not aim primarily at making a profit, the fact that it does not bear the risks associated with the activity, and any public financing of the activity in question.

2. The fact that the premises to be constructed are leased only to a single undertaking is not capable of calling into question the lessor's status of a body governed by public law, where it is shown that the lessor meets a need in the general interest not having an industrial or commercial character.

Timmermans Edward Jann

von Bahr Rosas

Delivered in open court in Luxembourg on 22 May 2003.

R. Grass M. Wathelet

Registrar President of the Fifth Chamber