

### Questions referred

1. Is the requirement that the minimum capacity levels stipulated in Article 44(2) of Directive 2004/18/EC <sup>(1)</sup> (hereinafter Directive) of the Council of the European Union ('Council') be in accordance with Article 47(1)(b) of that Directive to be interpreted in such a way that the contracting authority is entitled to link the minimum capacity levels to a single indicator in an accounting document (balance sheet) that it selects to monitor economic and financial standing?
2. If the answer to the first question is yes, Budapest Court of Appeal further asks whether the consistency requirement laid down by Article 44(2) of the Directive is fulfilled by data selected for assessment of the minimum capacity levels (profit/loss according to the balance sheet), where such data has different content pursuant to the accounting legislation of individual Member States?
3. Is it sufficient, for the purposes of correcting any discrepancies which doubtless exist between Member States, if the contracting authority ensures that there is an opportunity to employ external resources (Article 47(3)), in addition to the documents selected as proof of economic and financial standing, or must the contracting authority, in order to meet the requirement of consistency as regards all the documents selected by it, ensure that that capacity can be demonstrated in another manner (Article 47(5))?

<sup>(1)</sup> 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).

### Reference for a preliminary ruling from the Bundesgerichtshof (Germany), lodged on 11 May 2011 — BrainProducts GmbH v Bio Semi V.O.F. and Others

(Case C-219/11)

(2011/C 232/24)

*Language of the case: German*

#### Referring court

Bundesgerichtshof

#### Parties to the main proceedings

*Claimant and appellant:* BrainProducts GmbH

*Defendants and respondents:* Bio Semi V.O.F., Antonius Pieter Kuiper, Robert Jan Gerard Honsbeek, Alexander Coenraad Metting van Rijn

#### Question referred

Does a product which is intended by the manufacturer to be applied for human beings for the purpose of investigation of a physiological process constitute a medical device, within the

terms of the third indent of Article 1(2)(a) of Directive 93/42/EEC, <sup>(1)</sup> only in the case where it is intended for a medical purpose?

<sup>(1)</sup> Council Directive 93/42/EEC of 14 June 1993 concerning medical devices (OJ 1993 L 169, p. 1), last amended by Directive 2007/47/EC of the European Parliament and the Council of 5 September 2007 (OJ 2007 L 247, p. 21).

### Reference for a preliminary ruling from the Oberverwaltungsgericht Berlin-Brandenburg (Germany) lodged on 11 May 2011 — Leyla Ecem Demirkan v Federal Republic of Germany

(Case C-221/11)

(2011/C 232/25)

*Language of the case: German*

#### Referring court

Oberverwaltungsgericht Berlin-Brandenburg

#### Parties to the main proceedings

*Applicant:* Leyla Ecem Demirkan

*Defendant:* Federal Republic of Germany

#### Questions referred

1. Does the passive freedom to provide services also fall within the scope of the concept of freedom to provide services within the meaning of Article 41(1) of the Additional Protocol to the Agreement establishing an Association between the European Economic Community and Turkey of 23 November 1970 <sup>(1)</sup> (Additional Protocol)?
2. In the event that the first question is answered in the affirmative: does the protection of the passive freedom to provide services under the law on the Association Agreement, specifically pursuant to Article 41(1) of the Additional Protocol, also extend to Turkish nationals, who — like the claimant — do not wish to enter the Federal Republic of Germany in order to receive a specific service, but for the purposes of visiting relatives for a stay of up to three months and rely on the mere possibility of receiving services in the Federal territory?

<sup>(1)</sup> OJ 1972, L 293, p. 4 (no official translation published in English).

### Reference for a preliminary ruling from the Administrativen Sad Varna (Bulgaria) lodged on 16 May 2011 — TETS Haskovo AD v Direktor na Direktsia 'Obzhalvane i upravlentie na izpalnenieto', gr. Varna, pri Sentralno Upravlenie na Natsionalna Agentsia po Prihodite

(Case C-234/11)

(2011/C 232/26)

*Language of the case: Bulgarian*

#### Referring court

Administrativen Sad Varna