

Reference for a preliminary ruling from the Naczelny Sąd Administracyjny (Republic of Poland), lodged on 18 June 2009 — Kronospan Mielec sp. z o. o. v Dyrektor Izby Skarbowej w Rzeszowie

(Case C-222/09)

(2009/C 220/32)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Kronospan Mielec sp. z o. o.

Respondent: Dyrektor Izby Skarbowej w Rzeszowie

Question referred

- (a) Is the third indent of Article 9(2)(e) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1, as amended; ‘the Sixth Directive’) — now corresponding to Article 56(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1, as amended; ‘Directive 2006/112’) — to be interpreted as meaning that the services of engineers referred to therein, when provided to a person subject to value added tax who is carrying out commissioned work encompassing those services for a recipient of services established in another Member State of the Community, are to be taxed at the place where the recipient of the services (the customer) has established its business or has a fixed establishment;
- (b) or should it be concluded that such services, being services relating to scientific activities pursuant to the first indent of Article 9(2)(c) of the Sixth Directive (now corresponding to Article 52(a) of Directive 2006/112), must be taxed at the place where they are physically carried out — on the basis that those services take the form of work that encompasses the investigation and measurement of emissions under legislation on environmental protection, including the conduct of investigations in connection with carbon dioxide (CO₂) emissions and trading in CO₂ emissions, the preparation and checking of documentation relating to that work and the analysis of potential sources of pollution, and that is carried out with the objective of acquiring new knowledge and new technological know-how directed at the production of new substances, products and systems and the application of new technological procedures within the production process?

Action brought on 19 June 2009 — Commission of the European Communities v Ireland

(Case C-226/09)

(2009/C 220/33)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: M. Konstantinidis, A.-A. Gilly, Agents)

Defendant: Ireland

The applicant claims that the Court should:

- Declare that, by attributing weightings to the award criteria following the closing date for the submission of the bids and by modifying them subsequent to an initial review of the submitted bids, Ireland has failed to fulfil its obligations under the principles of equal treatment and transparency as interpreted by the European court of Justice.
- order Ireland to pay the costs.

Pleas in law and main arguments

In the case of the award procedure in question the contracting authority produced a tender document where it was reasonably assumed that the award criteria would be applied in descending order of importance. Following the closing date for the submission of the bids it then decided to attribute relative weightings to the award criteria. Subsequent to an initial review of the submitted bids the evaluation team of the contracting authority discussed the possibility of varying these weightings and eventually modified them.

The relative weightings given to the award criteria after submission of the bids and the initial review modified the emphasis among the award criteria and attributed a materially different relative importance to that which a tenderer would have reasonably understood from the contract documents.

The award procedure in question being for the provision of services which are not enumerated in Annex II A to directive 2004/18/EC ⁽¹⁾, the detailed procedural rules of that directive are not applicable. Accordingly, article 40 of the directive, pursuant to which contracting authorities have to specify in the invitation to tender, at the latest, the relative weightings of the award criteria, or the descending order of their importance, was also not applicable. Nevertheless, on the basis of the case law of the European Court of Justice, the contracting authority is bound to comply with the fundamental principles of the Treaty, including the principles of equal treatment and transparency.