

**Judgment of the Court (Third Chamber) of 25 March 2010
(reference for a preliminary ruling from the
Oberlandesgericht Düsseldorf — Germany) — Helmut
Müller GmbH v Bundesanstalt für Immobilienaufgaben**

(Case C-451/08) ⁽¹⁾

(Procedures for the award of public works contracts — Public works contracts — Concept — Sale by a public body of land on which the purchaser intends subsequently to carry out works — Works corresponding to a municipal authority's urban-planning objectives)

(2010/C 134/10)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Helmut Müller GmbH

Defendant: Bundesanstalt für Immobilienaufgaben

Intervening parties: Gut Spascher Sand Immobilien GmbH,
Municipality of Wildeshausen

Re:

Reference for a preliminary ruling — Oberlandesgericht Düsseldorf — Interpretation of Article 1(2)(b) and (3) of European Parliament and Council Directive 2004/18/EC 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) — Concepts of 'public works contract' and 'public works concession' — Obligation to put out to tender the sale of land by a third party in circumstances where the acquirer subsequently has to carry out on that land works corresponding to town planning objectives defined by a local authority and a draft of which has been approved by that authority since before the conclusion of the sale contract.

Operative part of the judgment

1. The concept of 'public works contracts', within the meaning of Article 1(2)(b) 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, does not require that the works which are the subject of the contract be

materially or physically carried out for the contracting authority, provided that they are carried out for that authority's immediate economic benefit. The latter condition is not satisfied by the exercise by that contracting authority of regulatory urban-planning powers.

2. The concept of 'public works contracts', within the meaning of Article 1(2)(b) of Directive 2004/18, requires that the contractor assume a direct or indirect obligation to carry out the works which are the subject of the contract and that that obligation be legally enforceable in accordance with the procedural rules laid down by national law.
3. The 'requirements specified by the contracting authority', within the meaning of the third variant set out in Article 1(2)(b) of Directive 2004/18, cannot consist in the mere fact that a public authority examines certain building plans submitted to it or takes a decision in the exercise of its regulatory urban-planning powers.
4. In circumstances such as those of the case in the main proceedings, there is no public works concession within the meaning of Article 1(3) of Directive 2004/18.
5. In circumstances such as those of the case in the main proceedings, the provisions of Directive 2004/18 do not apply to a situation in which one public authority sells land to an undertaking, even though another public authority intends to award a works contract in respect of that land but has not yet formally decided to award that contract.

⁽¹⁾ OJ C 6, 10.1.2009.

**Judgment of the Court (Eighth Chamber) of 18 March 2010
(reference for a preliminary ruling from the Hof van
beroep te Gent — Belgium) — Erotic Center BVBA v
Belgische Staat**

(Case C-3/09) ⁽¹⁾

(Sixth VAT Directive — Article 12(3)(a) — Annexe H — Reduced rate of VAT — Concept of admissions to a cinema — Individual cubicles for watching films on demand)

(2010/C 134/11)

Language of the case: Dutch

Referring court

Hof van beroep te Gent

Parties to the main proceedings

Applicant: Erotic Center BVBA

Defendant: Belgische Staat

Re:

Reference for a preliminary ruling — Hof van Beroep te Gent — Interpretation of Annex H, Category 7 of the 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)(now Annex III, No. 7 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Reduced rate applicable to certain supplies of goods and services — Cinemas — Meaning — Individual cubicle for viewing films on demand

Operative part of the judgment

The concept of admissions to a cinema referred to in the first paragraph of Category 7 in Annex H to 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, as amended by Council Directive 2001/4/EC of 19 January 2001, must be interpreted as meaning that it does not cover the payment made by a customer so as to be able to watch on his own one or more films, or extracts from films, in private cubicles such as those in issue in the main proceedings.

⁽¹⁾ OJ C 82, 4.4.2009.

Judgment of the Court (Second Chamber) of 25 March 2010 — European Commission v Kingdom of the Netherlands

(Case C-79/09) ⁽¹⁾

(Failure of Member State to fulfil obligations — Value added tax — Directive 2006/112/EC — Articles 13 and 132 — Bodies governed by public law — Capacity as public authorities — Activities — Treatment as non-taxable persons — Exemptions — Socio-cultural, health and education sectors — ‘Euroregions’ — Promotion of work mobility — Making available of personnel — Burden of proof)

(2010/C 134/12)

Language of the case: Dutch

Parties

Applicant: European Commission (represented by: D. Triantafyllou and W. Roels, acting as Agents)

Defendant: Kingdom of the Netherlands (represented by: C.M. Wissels, D.J.M. de Grave and Y. de Vries, acting as Agents)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Articles 2(1)(c), 13, 24(1) and 132 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Making available of personnel in the health, education and socio-cultural sectors — Promotion of work mobility — Euroregion

Operative part of the judgment

The Court:

1. Dismisses the action.
2. Orders the European Commission to pay the costs.

⁽¹⁾ OJ C 129 of 6.6.2006.

Judgment of the Court (Fourth Chamber) of 18 March 2010 (reference for a preliminary ruling from the Hof van beroep te Brussel (Belgium)) — SGS Belgium NV, Firme Derwa NV, Centraal Beheer Achmea NV v Belgisch Interventie- en Restitutiebureau, Firme Derwa NV, Centraal Beheer Achmea NV, SGS Belgium NV, Belgisch Interventie- en Restitutiebureau

(Case C-218/09) ⁽¹⁾

(Reference for a preliminary ruling — Regulation (EEC) No 3665/87 — Export refunds — Article 5(3) — Conditions for granting — Exception — Force majeure — Products which perished in transit)

(2010/C 134/13)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

Applicants: SGS Belgium NV, Firme Derwa NV, Centraal Beheer Achmea NV