

Action brought on 20 March 2003 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-125/03)

(2003/C 112/34)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 20 March 2003 by the Commission of the European Communities, represented by Klaus Wiedner, of its Legal Service, with an address for service in Luxembourg.

The Commission claims that the Court should:

- declare that, in so far as the refuse disposal contracts concluded by the town councils of Lüdinghausen and Olfen and the district councils of Nordkirchen, Senden and Ascheberg were awarded without complying with the requirements concerning contract notices laid down in Article 8 in conjunction with Articles 15(2) and 16(1) of Directive 92/50, ⁽¹⁾ the Federal Republic of Germany has failed to fulfil its obligations under that directive, and
- order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

Although it has admitted the infringements complained of and asserts its intention in future to invite tenders for refuse disposal services in a manner consistent with Community law on the award of contracts, the defendant has taken no steps to terminate the existing contracts which still have until 31 December 2003 to run.

The defendant does not even contend that termination of the contracts is impossible under German law. It merely points out that premature termination of the contracts could give rise to claims for damages. On the contrary, it is conducive to the effectiveness of Community law on the award of contracts if contracting authorities can expect, if necessary, to have to make payments of damages.

Moreover, the obligation to remedy infringements of Community law on the award of contracts by also terminating contracts already concluded cannot be called in question by Article 2(6) of Directive 89/665, ⁽²⁾ which deals with the review of possible infringements of Community law on the award of contracts. A Treaty infringement can be regarded as ended only when the Member State has both acknowledged the unlawfulness of its conduct and completely remedied the infringement.

⁽¹⁾ OJ L 209 of 24.7.1992, p. 1.

⁽²⁾ OJ L 395 of 30.12.1989, p. 33.

Action brought on 21 March 2003 by the Commission of the European Communities against Trendsoft (Irl) Ltd

(Case C-127/03)

(2003/C 112/35)

An action against Trendsoft (Irl) Ltd was brought before the Court of Justice of the European Communities on 21 March 2003 by the Commission of the European Communities, represented by L. Flynn and C. Giolito, acting as agents, with an address for service in Luxembourg.

The Applicant claims that the Court should:

- condemn the defendant to pay the applicant the sum of 24 751,57 Euros (twenty four thousand seven hundred and fifty one Euros and fifty seven cents), corresponding to 21 303,00 Euros as the amount due and 3 448,57 Euros as late payment interest as of 31 March 2003, at a rate of 6,09 % until 31 December 2002 and a rate of 8,09 % thereafter;
- condemn the defendant to pay 4,72 Euros (four Euros and seventy two cents) per day by way of interest from 1 April 2003 until the date on which the debt is repaid in full;
- condemn the defendant to pay the costs of the present action.

Pleas in law and main arguments

In accordance with Article 16(3) of the financial Annex to the contract, the defendant undertook, in the event that the total financial contribution due for the project was less than the payments made for the project, to immediately reimburse the difference to the Commission.

In its final consolidated cost statement of 23 September 1999 the Commission indicated that it would not take certain claimed costs into account and explained why these were inadmissible. The defendant accepted the Commission's proposed final consolidated cost statement by fax of 5 April 2000. It does not dispute its obligation to reimburse the amounts unduly paid by the Commission but has failed to comply with that obligation and is, therefore, in breach of its obligation arising under the contract.