

**Questions referred**

1. Is the list of grounds for excluding public works contractors contained in Article 24 of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199) exhaustive?
2. If that list is not exhaustive, does a provision which lays down (in order to protect transparency in the economic functioning of the State) that the status of owner, partner, main shareholder or management executive of a media undertaking is incompatible with the status of owner, partner, main shareholder or management executive of an undertaking contracting to perform a works, supply or services contract for the State, or for a legal person in the public sector in the broad sense, serve purposes which are compatible with the general principles of Community law and is that total prohibition on the award of public contracts to such undertakings compatible with the Community principle of proportionality?
3. If, within the meaning of Article 24 of Directive 93/37/EEC, the list of grounds for excluding contractors contained therein is an exhaustive list or if the national provision at issue cannot be construed as serving purposes which are compatible with the general principles of Community law or if, finally, the prohibition introduced in it is not compatible with the Community principle of proportionality, does the above directive, in preventing the inclusion, as grounds for excluding contractors from public works procurement procedures, of cases where the contractor, its executives (such as the owner of the undertaking or its main shareholder, partner or management executive), or intermediaries acting for the said executives, work in media undertakings which are able to exercise an undue influence on the public works procurement procedure, because of the influence which they are able to exert in general, infringe the general principles of the protection of competition and transparency and Article 5 (2) of the Treaty establishing the European Community which enacts the principle of subsidiarity?

**Action brought on 3 May 2007 — Commission of the European Communities v Kingdom of Sweden**

(Case C-223/07)

(2007/C 140/27)

*Language of the case: Swedish*

**Parties**

*Applicant:* Commission of the European Communities (represented by: N. Yerrell and P. Dejmek, acting as Agents)

*Defendant:* Kingdom of Sweden

**Form of order sought**

- A declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive) <sup>(1)</sup> and Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system <sup>(2)</sup> or, in any event, by failing to communicate them to the Commission, the Kingdom of Sweden has failed to fulfil its obligations under that directive
- An order that the Kingdom of Sweden should pay the costs.

**Pleas in law and main arguments**

The period prescribed for transposition of the Directive expired on 30 April 2006.

<sup>(1)</sup> OJ 2004 L 164, p. 44.

<sup>(2)</sup> OJ 2004 L 164, p. 114.

**Action brought on 10 May 2007 — Commission of the European Communities v Federal Republic of Germany**

(Case C-235/07)

(2007/C 140/28)

*Language of the case: German*

**Parties**

*Applicant:* Commission of the European Communities (represented by G. Braun and P. Dejmek, acting as Agents)

*Defendant:* Federal Republic of Germany

**Form of order sought**

- declare that, by not bringing into force the laws, regulations and administrative provisions necessary to implement Directive 2004/49/EC <sup>(1)</sup> of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC <sup>(2)</sup> on the licensing of railway undertakings and Directive 2001/14/EC <sup>(3)</sup> on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive) into national law, or by not informing the Commission thereof, the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty and that directive;

- order the Federal Republic of Germany to pay the costs.

**Pleas in law and main arguments**

The period laid down for implementing the directive expired on 30 April 2006.

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<sup>(1)</sup> OJ 2004 L 164, p. 44

<sup>(2)</sup> OJ 1995 L 143, p. 70

<sup>(3)</sup> OJ 2001 L 75, p. 29