to the income derived from that fee, and which significantly increases the fee for a particular technology but leaves it unchanged for another.

(1) OJ C 134, 22.5.2010.

Judgment of the Court (Third Chamber) of 17 March 2011 (reference for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Strong Segurança SA v Município de Sintra, Securitas-Serviços e Tecnologia de Segurança

(Case C-95/10) (1)

(Public service contracts — Directive 2004/18/EC — Article 47(2) — Direct effect — Whether applicable to the services referred to in Annex II B to that directive)

(2011/C 139/17)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Appellant: Strong Segurança SA

Respondents: Município de Sintra, Securitas-Serviços e Tecnologia de Segurança

Re:

Reference for a preliminary ruling — Supremo Tribunal Administrativo — Interpretation of Articles 21, 23, 35(4) and 47(2) of, and of Annex II B to, 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) — Economic and financial capacity of the tenderers — Whether an economic operator can rely on the capacities of other entities — Direct effect of a directive implemented late

Operative part of the judgment

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 create the obligation, for Member States, to apply Article 47(2) of that directive also to contracts which have as their object services referred to in Annex II B thereto. However, that directive does not preclude Member States and, possibly, contracting authorities from providing for such application in, respectively, their legislation and the documents relating to the contract.

(1) OJ C 113, 1.5.2010.

Judgment of the Court (Eighth Chamber) of 17 March 2011 (reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece)) — Navtiliaki Etairia Thasou AE (C-128/10), Amalthia I Navtiki Etairia (C-129/10) v Ipourgos Emborikis Navtilías

(Joined Cases C-128/10 and C-129/10) (1)

(Reference for a preliminary ruling — Freedom to provide services — Maritime cabotage — Regulation (EEC) No 3577/92 — Articles 1 and 4 — Prior administrative authorisation for cabotage services — Review of conditions relating to the safety of ships — Maintenance of order in ports — Public service obligations — Absence of precise criteria known in advance)

(2011/C 139/18)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Applicants: Navtiliaki Etairia Thasou AE (C-128/10), Amalthia I Navtiki Etairia (C-129/10)

Defendant: Ipourgos Emborikis Navtilías

Intervener: Koinopraxia Epibatikon Ochimatagogon Ploion Kavalas — Thasou (C-128/10)

Re:

Reference for a preliminary ruling — Simvoulio tis Epikratias — Interpretation of Arts 1, 2 and 4 of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7) — National legislation requiring prior administrative authorisation for cabotage services — System aimed at verifying whether schedules can be implemented under conditions of safety for the ship and maintenance of order in the port — No precise criteria known in advance

Operative part of the judgment

The provisions of Article 1 in conjunction with Article 4 of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) must be interpreted as not precluding national legislation which establishes a system of prior authorisation for maritime cabotage services providing for the adoption of administrative decisions imposing compliance with certain timeslots for reasons relating, first, to the safety of ships and order in ports and, second, to public service obligations, provided that such a system is based on objective, non-discriminatory criteria which are known in advance, particularly in cases where more than one shipowner is interested in entering the same port at the same time. With respect to the administrative decisions imposing public service obligations, it is also necessary that a genuine public service need

arising from the inadequacy of the regular transport services under conditions of free competition can be demonstrated. It is for the national court to determine whether in the main proceedings those conditions are met.

([1]) OJ C 134, 22.5.2010.

Appeal brought on 10 November 2010 by Mariyus Noko Ngele against the order of the General Court (Third Chamber) made on 10 December 2009 in Case T-390/09 Mariyus Noko Ngele v European Commission

(Case C-525/10 P)

(2011/C 139/19)

Language of the case: French

Parties

Appellant: Mariyus Noko Ngele (represented by: F. Sabakunzi, avocat)

Other party to the proceedings: European Commission

By order of 10 March 2011, the Court of Justice (Eighth Chamber) declared the appeal inadmissible.

Action brought on 22 November 2010 — Transportes y Excavaciones J. Asensi S.L. v Kingdom of Spain

(Case C-540/10)

(2011/C 139/20)

Language of the case: Spanish

Parties

Applicant: Transportes y Excavaciones J. Asensi S.L. (represented by: C. Nicolau Castellanos, abogado)

Defendant: Kingdom of Spain

By order of 10 March 2011 the Court of Justice (Eighth Chamber) declared that it is clear that the Court has no jurisdiction to take cognisance of the action.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 4 February 2011 — Schutzverband der Spirituosen-Industrie eV v Sonnthurn Vertriebs GmbH

(Case C-51/11)

(2011/C 139/21)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Schutzverband der Spirituosen-Industrie eV

Defendant: Sonnthurn Vertriebs GmbH

Questions referred

1. Does the concept of health in the definition of the expression 'health claim' in Article 2(2)(5) of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods, ([1]) last amended by Commission Regulation (EU) No 116/2010 of 9 February 2010, ([2]) also cover general well-being?

2. If the answer to Question 1 is in the negative:

   Is a statement made in commercial communications, whether in the labelling, presentation or advertising of foods, which are to be to be delivered as such to the final consumer, intended to cover at least also general well-being or merely health-related well-being where it refers to one of the functions mentioned in Article 13(1) and Article 14(1) of Regulation (EC) No 1924/2006 in the manner described in Article 2(2)(5) thereof?

3. If the answer to Question 1 is in the negative and a statement in the sense described in Question 2 is intended to cover at least also health-related well-being:

   Having regard to the freedom of expression and information under Article 6(3) TEU, in conjunction with Article 10 of the ECHR, is it consistent with the Community law principle of proportionality to include in the scope of the prohibition laid down in the first sentence of Article 4(3) of Regulation (EC) No 1924/2006 a statement that a particular beverage containing more than 1,2 % by volume of alcohol does not place a strain on or adversely affect the body or its functions?

([1]) OJ 2006 L 404, p. 9.
([2]) OJ 2010 L 37, p. 16.

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 7 February 2011 — Vodafone España, S.A.

(Case C-55/11)

(2011/C 139/22)

Language of the case: Spanish

Referring court

Tribunal Supremo