

Case C-107/98

Teckal Srl

v

Comune di Viano and

Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia

(Reference for a preliminary ruling
from the Tribunale Amministrativo Regionale per l'Emilia-Romagna)

(Public service and public supply contracts — Directives 92/50/EEC and 93/36/EEC — Award by a local authority of a contract for the supply of products and provision of specified services to a consortium of which it is a member)

Opinion of Advocate General Cosmas delivered on 1 July 1999. I-8123
Judgment of the Court (Fifth Chamber), 18 November 1999 I-8139

Summary of the Judgment

1. *Preliminary rulings — Jurisdiction of the Court — Extraction of the relevant points of Community law — Jurisdiction of the national courts — Application of provisions as interpreted*
(EC Treaty, Art. 177 (now Art. 234 EC))

2. *Approximation of laws — Procedures for the award of public supply contracts — Directive 93/36 — Scope — Contracts awarded by a contracting authority to a distinct and independent body — Covered — Where the successful tenderer is itself a contracting authority — Irrelevant*
 (Council Directives 92/50, Art. 6, and 93/36)

1. Where, under the procedure provided for by Article 177 of the Treaty (now Article 234 EC), questions are formulated imprecisely, the Court may extract — from all the information provided by the national court and from the documents concerning the main proceedings — the points of Community law requiring interpretation, having regard to the subject-matter of the dispute. In order to provide the national court with a satisfactory answer, the Court may deem it necessary to consider provisions of Community law which the national court has not mentioned in its question. On the other hand, by virtue of the division of functions provided for under the above provision, it is for the national court to apply the rules of Community law, as interpreted by the Court, to a specific case. No such application is possible without a comprehensive appraisal of the facts of the case.

2. Directive 93/36 coordinating procedures for the award of public supply contracts is applicable in cases where a contracting authority, such as a local

authority, plans to conclude in writing, with an entity which is formally distinct from it and independent of it in regard to decision-making — which is not the position where the local authority exercises over a legally distinct person a form of control similar to that exercised over its own departments and, at the same time, the person carries out the essential part of its activities together with the controlling local authority or authorities — a contract for pecuniary interest for the supply of products, whether or not that entity is itself a contracting authority.

The only permitted exceptions to the application of Directive 93/36 are those which are exhaustively and expressly mentioned therein. That Directive does not contain any provision comparable with Article 6 of Directive 92/50 relating to the coordination of procedures for the award of public service contracts, which excludes from its scope public contracts awarded, under certain conditions, to contracting authorities.