JUDGMENT OF THE COURT (Third Chamber)

10 September 2009*

In Case C-206/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Thüringer Oberlandesgericht (Germany), made by decision of 8 May 2008, received at the Court on 19 May 2008, in the proceedings

Wasser- und Abwasserzweckverband Gotha und Landkreisgemeinden (WAZV Gotha)

v

Eurawasser Aufbereitungs- und Entsorgungsgesellschaft mbH,

intervening parties:

Stadtwirtschaft Gotha GmbH,

* Language of the case: German.

Wasserverband Lausitz Betriebsführungs GmbH (WAL),

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, J. N. Cunha Rodrigues (Rapporteur), J. Klučka, P. Lindh, and A. Arabadjiev, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 23 April 2009,

after considering the observations submitted on behalf of:

— Wasser- und Abwasserzweckverband Gotha und Landkreisgemeinden (WAZV Gotha), by S. Wellmann and P. Hermisson, Rechtsanwälte,

— Eurawasser Aufbereitungs- und Entsorgungsgesellschaft mbH, by U.-D. Pape, Rechtsanwalt,

— Stadtwirtschaft Gotha GmbH, by E. Glahs, Rechtsanwältin,

— Wasserverband Lausitz Betriebsführungs GmbH (WAL), by S. Gesterkamp and S. Sieme, Rechtsanwälte,

— the German Government, by M. Lumma and J. Möller, acting as Agents,

— the Czech Government, by M. Smolek, acting as Agent,

— the Commission of the European Communities, by P. Oliver, D. Kukovec and C. Zadra, acting as Agents, and by B. Wägenbaur, Rechtsanwalt,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the term 'service concession' within the meaning of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1).

2 The reference was made in the course of proceedings between Wasser- und Abwasserzweckverband Gotha und Landeskreisgemeinden (Association for the distribution of water and the disposal of sewage in Gotha and the municipalities within its administrative district; 'WAZV Gotha') and Eurawasser Aufbereitungs- und Entsorgungsgesellschaft mbH (Water treatment and disposal company; 'Eurawasser') concerning the procurement procedure in respect of the public service for the distribution of drinking water and the disposal of sewage.

Legal context

3 Article 1(2)(a) and (d) of Directive 2004/17 provides:

'2. (a) "Supply, works and service contracts" are contracts for pecuniary interest concluded in writing between one or more of the contracting entities referred to in Article 2(2), and one or more contractors, suppliers, or service providers.

…

(d) “Service contracts” are contracts other than works or supply contracts having as their object the provision of services referred to in Annex XVII.

…’

4 Article 1(3)(b) of that directive states:

‘A “service concession” is a contract of the same type as a service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in that right together with payment.’

5 Article 2 of that directive states:

‘1. For the purposes of this Directive:

(a) “Contracting authorities” are State, regional or local authorities, bodies governed by public law, associations formed by one or several such authorities or one or several of such bodies governed by public law.

…

2. This Directive shall apply to contracting entities:

(a) which are contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 3 to 7;

…'

6 Article 4 of Directive 2004/17 provides:

'1. This Directive shall apply to the following activities:

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water; or

(b) the supply of drinking water to such networks.

2. This Directive shall also apply to contracts or design contests awarded or organised by entities which pursue an activity referred to in paragraph 1 and which:

…

(b) are connected with the disposal or treatment of sewage.

…'

7 Article 18 of that directive provides:

'This Directive shall not apply to works and service concessions which are awarded by contracting entities carrying out one or more of the activities referred to in Articles 3 to 7, where those concessions are awarded for carrying out those activities.'

8 Article 31 of that directive states:

'Contracts which have as their object services listed in Annex XVII A shall be awarded in accordance with Articles 34 to 59.'

9 Article 32 of that directive states:

'Contracts which have as their object services listed in Annex XVII B shall be governed solely by Articles 34 and 43.'

10 Under Article 71 of Directive 2004/17, the Member States were to bring into force the measures necessary to comply with that directive by 31 January 2006 at the latest.

The dispute in the main proceedings and the questions referred for a preliminary ruling

11 It is apparent from the case file that WAZV Gotha is an association of municipalities which is responsible, pursuant to specific provisions of German law, for ensuring the distribution of drinking water and the disposal of sewage for the population resident on its territory.

12 Under a business management contract concluded in 1994, WAZV Gotha entrusted to Stadtwirtschaft Gotha GmbH (municipal undertaking from the town of Gotha; 'Stadtwirtschaft') all the technical, business and administrative services in the water distribution sector. Given that that contract was due to expire in 2008, WAZV Gotha intended to allow Stadtwirtschaft to join it, as a member, so that it could continue to grant it the management contract. However, the supervising authorities, relying on public procurement provisions, refused to authorise Stadtwirtschaft's admission to WAZV Gotha.

13 In order to continue having its business managed by third parties, WAZV Gotha decided to grant a concession in respect of the service for the distribution of drinking water and the disposal of sewage. To that end, it launched, in September 2007, an informal bidding procedure, rather than the formal public procurement procedure referred to in Paragraph 97 et seq. of the Law against Restrictions on Competition (Gesetz gegen Wettbewerbsbeschränkungen; 'the GWB'). WAZV Gotha nevertheless published a notice in the *Official Journal of the European Union* on 19 September 2007, under reference 2007/S 180-220 518.

14 The tender notice announced that a service concession was to be awarded for the distribution of water and the disposal of sewage on the territory covered by WAZV Gotha for a period of 20 years, and invited interested undertakings to apply.

15 The tender notice and the related draft contracts provided that the concession holder would supply the services referred to, on the basis of private law contracts concluded in its own name and on its own account, to users resident in the territory covered by WAZV Gotha, and that it would receive, in consideration, payment from those users.

16 It was provided that the concession holder was competent to calculate at its own discretion, and on an equitable basis, the payment due for the services supplied, and to set that amount on its own responsibility. That competence was, however, limited in so far as the concession holder had, up until 31 December 2009, to apply the rates in force at the time of the publication of the tender notice and, thereafter, the rates had to comply with the provisions of the Law of Thuringia on municipal taxes (Thüringer Kommunlabgabengesetz).

17 The tender notice and the draft contracts provided also that the technical installations for water distribution and disposal of sewage were to remain the property of WAZV Gotha, and that those installations were to be leased by the concession holder, who was to be entitled to include the corresponding rent in the payment sought from users in

consideration for the services supplied. The maintenance of those installations was to be the responsibility of the concession holder.

18 WAZV Gotha undertook to make compulsory, by regulation, connection to the public networks of water distribution and disposal of sewage and use of those networks. The concession holder could not, however, require that obligation to be respected in each individual case.

19 Lastly, WAZV Gotha undertook, as far as legally possible, to forward the amount of public subsidies received by it to the concession holder.

20 The closing date for receipt of requests to participate in the procedure was given in the tender notice as 8 October 2007. By letter of 4 October 2007, Eurawasser objected to WAZV Gotha's intention to award the abovementioned services not by a formal tender procedure for the award of a service contract, but by way of a service concession.

21 Eurawasser submitted its request to participate on 8 October 2007. Stadtwirtschaft and Wasserverband Lausitz Betriebsführungs GmbH (management company answerable to the intra-community association for water in the Lausitz region; 'WAL') also participated in the competitive bidding procedure and were invited by WAZV Gotha to submit a bid. In total, at the end of the period laid down in the tender notice, eight requests to participate had been submitted.

22 WAVZ Gotha rejected Eurawasser's complaint by letter of 9 October 2007. After making further complaints, unsuccessfully, on 19 October and 23 November 2007, Eurawasser brought an action before the appropriate Vergabekammer (Public Procurement Board) on the ground that WAZV Gotha had not chosen the appropriate award procedure.

23 By decision of 24 January 2008, the Vergabekammer held that the operation in fact amounted to a service contract, that WAZV Gotha ought to have initiated a formal tender procedure and that the procedure should be re-established from the stage prior to the publication of the tender notice.

24 WAZV Gotha appealed against that decision to the Thüringer Oberlandesgericht (Higher Regional Court of Thuringia).

25 Stadtwirtschaft and WAL were granted leave to intervene in that appeal.

26 It was in those circumstances that the Thüringer Oberlandesgericht decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘1. Is a contract for the supply of services (here, the supply of water and treatment of waste water), the content of which does not provide for the contracting authority to make a direct payment of consideration to the supplier but for the supplier to be afforded the right to collect payment under private law from third parties, to be classified for that reason alone as a “service concession” within the meaning of Article 1(3)(b) of Directive [2004/17] as distinct from a service contract for pecuniary interest within the meaning of Article 1(2)(a) and (d) of the Directive?

2. If the first question is answered in the negative, does a contract of the kind described in the first question constitute a service concession if the risk connected with operating the service in question, because of the rules of public law governing it (compulsory connection and usage; prices calculated on a break-even basis), is significantly limited from the outset — that is to say, even if the contracting authority were to provide the service itself — but the supplier assumes that limited risk in full or at least to a predominant extent?

3. If the second question is also answered in the negative, is Article 1(3)(b) of Directive [2004/17] to be interpreted as meaning that the degree of risk connected with operating the service, particularly the marketing risk, must in qualitative terms be comparable to that which normally exists under conditions in a free market with more than one competing tenderer?'

Admissibility

27 WAZV Gotha argues that the reference for a preliminary ruling is inadmissible on the ground that the reply to the first question is clearly apparent from the definition of a service concession in Article 1(3)(b) of Directive 2004/17 and from the case-law of the Court. Therefore, the interpretation requested is unnecessary. WAL submits arguments which are, in essence, similar.

28 Stadtwirtschaft maintains that the questions referred for a preliminary ruling are not relevant for the purposes of the judgment which the referring court must deliver, given that the dispute in the main proceedings can be decided upon without an answer to those questions. WAZV Gotha organised a proper award procedure, even if it transpires that the contracts at issue in the main proceedings must be categorised as service contracts within the scope of Directive 2004/17.

29 On the other hand, the Commission of the European Communities submits that the reference for a preliminary ruling is admissible. As is apparent from the order for reference, the national court takes the view that the questions referred, concerning the difference between the concepts of service contract and service concession, need to be answered to enable it to decide on the admissibility of the appeal before it.

30 Following the lodging of the order for reference, WAZV Gotha decided, on 4 September 2008, to cancel the bidding procedure which is the subject matter of the dispute in the main proceedings.

31 Following that cancellation, Eurawasser amended its application but did not withdraw it. Eurawasser now seeks a decision declaring that, in the cancelled procedure, its rights were infringed in respect of the rules of public procurement laid down in Paragraph 97 et seq. of the GWB.

32 By letter of 24 December 2008, the referring court informed the Court that it wished to continue with its request for a preliminary ruling. It took the view that, for it to be able to give judgment on the action as amended, it remained necessary to receive a reply to the questions referred, if only because service concessions are from the outset outside the scope of Paragraph 97 et seq. of the GWB and, consequently, the amendment of the action in the main proceedings does not affect the fact that proceedings before bodies with jurisdiction to review procurement procedures, that is to say, the Vergabekammer and the Vergabesenat, would be inadmissible in the event that the contract at issue in the main proceedings were categorised as a service concession.

33 In that regard, the Court has held that, in the context of the cooperation between the Court and the national courts established by Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of Community law, the Court is in principle bound to give a ruling (see, inter alia, Case C-544/07 *Rüffler* [2009] ECR I-3389, paragraph 36, and the case law cited).

34 The Court has also held that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court, in order to confirm its own jurisdiction. The Court may refuse to rule on a question referred for a

preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, *Rüffler*, paragraphs 37 and 38, and the case law cited).

35 In its order for reference, and in its letter of 24 December 2008, the referring court explained clearly the reasons why it considered the questions it has referred to be relevant, and why it considered a reply to those questions to be necessary to decide the dispute before it. In the light of those explanations, the questions referred appear neither hypothetical nor to have no relation with the subject matter of the dispute in the main proceedings.

36 Therefore, the questions referred for a preliminary ruling are admissible.

The questions referred for a preliminary ruling

Preliminary observations

37 As a preliminary point, it should be stated that, according to the information in the case file, WAZV Gotha falls within the definition of contracting authority in Article 2(1)(a) of Directive 2004/17; that contracting authority is one of the types of contracting entities to which that directive applies pursuant to Article 2(2)(a) thereof.

38 The case in the main proceedings, in addition, falls within Directive 2004/17 under Article 4 thereof, inasmuch as the contracting authority concerned, namely WAZV Gotha, is pursuing an activity in the sector of distribution of drinking water and disposal of sewage.

39 The dispute in the main proceedings falls within the temporal scope of Directive 2004/17, since the period laid down in Article 71 of that directive for its implementation expired on 31 January 2006, and the bidding procedure at issue in the main proceedings was launched in September 2007.

40 It should be borne in mind that a definition of service concession was introduced into Community legislation by Article 1(2)(a) of Directive 2004/17. It did not appear in the earlier directives in that area, in particular, Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 199, p. 84).

41 In Article 18 of Directive 2004/17, the Community legislature states that the directive does not apply to service concessions which are awarded by contracting authorities carrying out activities, inter alia, in the water sector.

42 In addition, it should be recalled that, in relation to its own sphere of application, 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), includes, in Article 1(2)(a) and (4) thereof, definitions of 'public contracts' and of 'service concession' which are substantially the same as the corresponding definitions in Article 1(2)(a) and (3)(b) of Directive 2004/17.

43 The fact that the definitions are substantially the same means that the same considerations are applicable to an interpretation of the concepts of service contract and service concession within the respective spheres of application of those two directives.

44 It follows that, if the transaction at issue in the main proceedings is categorised as a 'service contract' within the meaning of Directive 2004/17, such a contract must, in principle, be concluded in accordance with the procedures laid down in Articles 31 and 32 thereof. On the other hand, under Article 18 of that directive, if that transaction is categorised as a service concession, the directive is not applicable to it. In such circumstances, the awarding of the concession remains subject to the fundamental rules of the Treaty, in general, and to the principles of equal treatment and of non-discrimination on the ground of nationality, and the concomitant obligation of transparency, in particular (see, to that effect, Case C-324/98 *Telaustria and Telefonadress* [2000] ECR I-10745, paragraphs 60 to 62; Case C-231/03 *Coname* [2005] ECR I-7287, paragraphs 16 to 19; Case C-458/03 *Parking Brixen* [2005] ECR I-8585, paragraphs 46 to 49; and Case C-324/07 *Coditel Brabant* [2008] ECR I-8457, paragraph 25).

45 That is the context in which the referring court seeks to clarify the criteria which allow a distinction to be established between a service contract and a service concession.

The first and second questions

46 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether, in a contract for the supply of services, the fact that the supplier does not receive consideration directly from the contracting authority, but is entitled to collect payment under private law from third parties, is sufficient, in itself, for the contract in question to be categorised as a service concession, within the meaning of Article 1(3)(b) of Directive 2004/17. If that question is answered in the negative, the referring court asks whether such a contract must be categorised as a service concession where the supplier assumes all, or at least to a predominant extent,

the risk which the contracting authority runs in operating the service, even if that risk is significantly limited from the outset on account of the rules of public law governing the service.

47 Advocating a reply in the affirmative to the first question, WAZV Gotha, Stadtwirtschaft and WAL, and the German and Czech Governments, maintain that the fact that the supplier is remunerated by way of a payment collected from the users of the service in question is sufficient for the transaction to be categorised as a service concession.

48 By contrast, Eurawasser and the Commission contend that it is necessary, in addition, that the supplier assume the financial risk of operating the service in question.

49 It must be noted, in that regard, that Article 1(2)(a) of Directive 2004/17 provides that 'supply, works and service contracts' are contracts for pecuniary interest concluded in writing between one or more contracting entities referred to in Article 2(2) of that directive, and one or more contractors, suppliers, or service providers.

50 Under Article 1(3) of Directive 2004/17, a 'service concession' is a contract of the same type as a service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service, or in that right together with payment.

51 It is clear from a comparison of those two definitions that the difference between a service contract and a service concession lies in the consideration for the provision of services. A service contract involves consideration which is paid directly by the contracting authority to the service provider (see, to that effect, *Parking Brixen*, paragraph 39) while, for a service concession, the consideration for the provision of services consists in the right to exploit the service, either alone, or together with payment.

52 The questions referred take, explicitly, as their starting point the fact that the contract in question provides that the supplier does not receive consideration directly from the contracting authority, but receives payment under private law, which it is authorised by the contracting authority to collect from third parties.

53 In the light of the criterion set out in paragraph 51 of this judgment, the fact that the service provider is remunerated by payments from third parties, in this case from users of the service in question, is one means of exercising the right, granted to the provider, to exploit the service.

54 That criterion had already been established by the case-law of the Court prior to the entry into force of Directive 2004/17. According to that case-law, a service concession existed where the agreed method of remuneration consisted in the right of the service provider to exploit for payment his own service (see, to that effect, *Telaustria and Telefonadress*, paragraph 58; order in Case C-358/00 *Buchhändler-Vereinigung* [2002] ECR I-4685, paragraphs 27 and 28; Case C-382/05 *Commission* v *Italy* [2007] ECR I-6657, paragraph 34; and judgment of 13 November 2008 in Case C-437/07 *Commission* v *Italy*, paragraph 29).

55 It is irrelevant, in that regard, whether the remuneration is governed by private or public law.

56 The Court has recognised the existence of a service concession, inter alia, where the service provider's remuneration came from payments made by users of a public car park, of public service transport and of a teledistribution network (see *Parking Brixen*, paragraph 40; Case C-410/04 *ANAV* [2006] ECR I-3303, paragraph 16; and *Coditel Brabant*, paragraph 24).

57 It follows therefrom that, in the case of a contract for the supply of services, the fact that the supplier is not remunerated directly by the contracting authority, but is entitled to collect payment from third parties, meets the requirement of consideration laid down in Article 1(3)(b) of Directive 2004/17.

58 That finding means, however, that the concepts of 'the right to exploit' and 'consideration for the provision [of services]', which appear in Article 1(3)(b) of Directive 2004/17, need to be explained.

59 It is clear from the case law of the Court that, when the agreed method of remuneration consists in the right for the provider to exploit the service it is providing, that method of remuneration means that the provider takes the risk of operating the services in question (see, to that effect, *Parking Brixen*, paragraph 40; Case C-382/05 *Commission* v *Italy*, paragraph 34; and Case C-437/07 *Commission* v *Italy*, paragraph 29).

60 On that issue, the parties which have submitted observations have presented, either as their primary argument, or in the alternative, diverging views.

61 WAZV Gotha claims that the fact that the supplier assumes the risk of operating the service, in circumstances such as those in the case in the main proceedings, is sufficient for it to be categorised as a service concession.

62 Stadtwirtschaft, WAL and the Czech Government contend that the supplier is not required to assume all of that risk. It would suffice were it to assume a predominant share of that risk.

63 The German Government submits that a service concession exists, since the risk assumed by the supplier in connection with the operation of the service is not marginal.

64 Eurawasser takes the view that, in the transaction at issue in the main proceedings, there is no significant risk which can be transferred to the supplier by the contracting authority. Therefore, the transaction should be categorised as a service contract and not a concession.

65 The Commission submits that there must be a significant risk in operating the service, which, however, does not necessarily have to correspond to the financial risk usually run on an open market. A service contract in which the financial risk is reduced to a minimum by the public authorities cannot be categorised as a service concession.

66 In that regard, it must be stated that risk is inherent in the economic operation of the service.

67 If the contracting authority continues to bear all of the risk by not exposing the supplier to the vagaries of the market, the awarding of the right to operate the service requires that the formalities provided for in Directive 2004/17 be applied, with a view to safeguarding transparency and competition.

68 In the complete absence of a transfer to the service provider of the risk connected with operating the service, the transaction concerned is a service contract (see, to that effect, Case C-234/03 *Contse and Others* [2005] ECR I-9315, paragraph 22; Case C-382/05 *Commission* v *Italy*, paragraphs 35 to 37; and, by analogy, in relation to a works concession, Case C-437/07 *Commission* v *Italy*, paragraphs 30 and 32 to 35). As was

stated in paragraph 51 of this judgment, in the case of a service contract, the consideration does not consist in the right to exploit the service.

69 The questions referred start from the premise that the supply of the service in question in the main proceedings involves very limited financial risks, even in the event that that service is provided by the contracting authority, on account of the application of the rules governing the sector of activity concerned.

70 According to some of the arguments submitted to the Court, for the transaction in question to constitute a concession in such circumstances, it is necessary that the risk transferred to the concession holder be a significant risk.

71 Those arguments cannot be accepted unreservedly.

72 It is not unusual that certain sectors of activity, in particular sectors involving public service utilities, such as the distribution of water and the disposal of sewage, are subject to rules which may have the effect of limiting the financial risks entailed.

73 First, the detailed rules of public law, to which the economic and financial operation of the service is subject, facilitate the supervision of how that service is operated, and scale down the factors which may threaten transparency and distort competition.

74 Second, it must remain open to the contracting authorities, acting in all good faith, to ensure the supply of services by way of a concession, if they consider that to be the best method of ensuring the public service in question, even if the risk linked to such an operation is limited.

75 Moreover, it would not be reasonable to expect a public authority granting a concession to create conditions which were more competitive and involved greater financial risk than those which, on account of the rules governing the sector in question, exist in that sector.

76 In such circumstances, as the contracting authority has no influence on the detailed rules of public law governing the service, it is impossible for it to introduce and, therefore, to transfer risk factors which are excluded by those rules.

77 In any event, even if the risk run by the contracting authority is very limited, it is necessary that the contracting authority transfer to the concession holder all, or at least a significant share, of the operating risk which it faces, in order for a service concession to be found to exist.

78 It is for the national court to assess whether there has been a transfer of all, or a significant share, of the risk faced by the contracting authority.

79 To that end, the general risks resulting from amendments to the rules, made in the course of performance of the contract, cannot be taken into account.

80 Therefore, the answer to the first and second questions is that, in relation to a contract for the supply of services, the fact that the supplier does not receive consideration directly from the contracting authority, but is entitled to collect payment under private law from third parties, is sufficient for that contract to be categorised as a 'service concession' within the meaning of Article 1(3)(b) of Directive 2004/17, where the supplier assumes all, or at least a significant share, of the operating risk faced by the contracting authority, even if that risk is, from the outset, very limited on account of the detailed rules of public law governing that service.

The third question

81 In the light of the reply given to the first and second questions, it is not necessary to reply to the third question.

Costs

82 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

In relation to a contract for the supply of services, the fact that the supplier does not receive consideration directly from the contracting authority, but is entitled to collect payment under private law from third parties, is sufficient for the contract in question to be categorised as a 'service concession' within the meaning of Article 1(3)(b) of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, where the supplier assumes all, or at least a significant share, of the operating risk faced by the contracting authority, even if that risk is, from the outset, very limited on account of the detailed rules of public law governing that service.

[Signatures]