JUDGMENT OF THE COURT (Fourth Chamber)

29 October 2009 *

In Case C-536/07,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 30 November 2007,

Commission of the European Communities, represented by D. Kukovec and R. Sauer, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Federal Republic of Germany, represented by M. Lumma and J. Möller, acting as Agents, and by H.-J. Prieß, Rechtsanwalt, with an address for service in Luxembourg,

defendant,

* Language of the case: German.

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Third Chamber, acting as President of the Fourth Chamber, R. Silva de Lapuerta, E. Juhász (Rapporteur), G. Arestis and J. Malenovský, Judges,

Advocate General: V. Trstenjak,
Registrar: N. Nanchev, Administrator,

having regard to the written procedure and further to the hearing on 25 March 2009,

after hearing the Opinion of the Advocate General at the sitting on 4 June 2009,

gives the following

Judgment

1 By its application, the Commission of the European Communities requests that the Court declare that the Federal Republic of Germany has failed to fulfil its obligations under Article 7, in conjunction with Article 11, 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, p. 54) by reason of the fact that the City of Cologne concluded a contract with Grundstücksgesellschaft Köln Messe 15 bis 18 GbR, now Grundstücksgesellschaft Köln Messe 8-11 GbR ('GKM-GbR'), on 6 August 2004

entitled 'lease of land with four exhibition halls' without applying the procedure for the award of public contracts involving a Europe-wide invitation to tender in accordance with those provisions.

Community legislation

2 Article 1 of Directive 93/37 states:

'For the purpose of this Directive:

(a) "public works contracts" are contracts for pecuniary interest concluded in writing between a contractor and a contracting authority as defined in (b), which have as their object either the execution, or both the execution and design, of works related to one of the activities referred to in Annex II or a work defined in (c) below, or the execution, by whatever means, of a work corresponding to the requirements specified by the contracting authority;

(b) "contracting authorities" shall be … regional or local authorities …

…

(c) a "work" means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic and technical function;

…'

3 Article 6 of Directive 93/37 provides:

'1. This Directive shall apply to:

(a) public works contracts whose estimated value net of value added tax (VAT) is not less than the equivalent in ecus of 5 000 000 special drawing rights (SDRs);

…'

4 Article 7(2) and (3) of Directive 93/37 sets out the cases in which the contracting authorities may award their public works contracts by negotiated procedure. Thus, under Article 7(3)(b), the contracting authorities may apply the negotiated procedure 'when, for technical or artistic reasons or for reasons connected with the protection of exclusive rights, the works may only be carried out by a particular contractor'.

5 According to Article 7(4):

'In all other cases, the contracting authorities shall award their public works contracts by the open procedure or by the restricted procedure.'

6 Article 11 of Directive 93/37 sets out the advertising obligations on, inter alia, contracting authorities required to use the open or restricted procedure to award their public works contracts.

7 Finally, Article 1 of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1) provides:

'For the purposes of this Directive:

(a) public service contracts shall mean contracts for pecuniary interest concluded in writing between a service provider and a contracting authority, to the exclusion of:

…

(iii) contracts for the acquisition or rental, by whatever financial means, of land, existing buildings, or other immovable property or concerning rights thereon;

nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;

…'

The project at issue and the pre-litigation procedure

8 KölnMesse GmbH ('KölnMesse') is a company governed by private law in which the City of Cologne holds 79.02% of the shares and the *Land* of North Rhine-Westphalia 20%, the remaining 0.98% being shared among various chambers and associations. Its purpose is to organise trade fairs and exhibitions to promote industry, commerce and crafts.

9 On 18 December 2003, KölnMesse sold land for the construction of four exhibition halls to GKM-GbR, a private investment firm, for EUR 67.4 million. An urban development plan was incorporated in the contract for the sale of this land.

10 On 6 August 2004, the City of Cologne and GKM-GbR concluded a contract entitled 'lease of land with four exhibition halls', by which GKM-GbR granted the City of Cologne the right to use the land and the buildings to be built upon it for a period of 30 years at a monthly rent of EUR 1.725 million, the first 13 months being rent-free. The parties agree that this contract is to be designated the 'main contract'. Under the terms of that contract, GKM-GbR undertook to carry out works of at least average quality and to hand these over to the City of Cologne in accordance with the specifications detailed in the contract as to their size, nature and fixtures and fittings. The latter were defined in the documents of the building permit of the City of Cologne. According to KölnMesse's

estimates, which the Commission has not contested, the cost of those building works was approximately EUR 235 million.

11 By a contract dated 11 August 2004 entitled 'underlease of land with four exhibition halls', which is in largely identical terms to those of the main contract, the City of Cologne granted KölnMesse the right to use the buildings to be constructed that were described in the main contract. On 11 and 16 August 2004, the same two bodies entered into a contract known as the 'implementation agreement relating to the underlease', by which the City of Cologne gave KölnMesse full power to exercise all the City of Cologne's rights and to fulfil all its obligations vis-à-vis GKM-GbR. The City of Cologne was also required to ensure that GKM-GbR performed the main contract in full in direct collaboration with KölnMesse.

12 The parties agree that the consideration to be paid by the City of Cologne to GKM-GbR under the terms of the main contract, namely the monthly rent over the 30-year term of the contract, was to amount in total to approximately EUR 600 million.

13 According to statements by the Federal Republic of Germany, the exhibition halls were completed and handed over to the City of Cologne, as head lessee, on 1 December 2005.

14 On 7 September 2005, the Commission received a complaint to the effect that the project described above constituted a public works contract which had been awarded in contravention of the Community rules applicable.

15 By letter of 19 December 2005, the Commission formally invited the Federal Republic of Germany to submit its observations in that regard.

16 By letter of 15 February 2006, the Federal Republic of Germany stated that KölnMesse was not a contracting authority within the meaning of Article 1(b) of Directive 93/37 and, therefore, the project in question was not covered by Community law relating to public contracts. A copy of KölnMesse's constitution was enclosed with that letter.

17 On 4 July 2006, the Commission sent the Federal Republic of Germany a supplementary letter of formal notice by which it requested sight of the contracts concluded in relation to the project at issue, and any other relevant documents or information.

18 By letter of 8 September 2006, the Federal Republic of Germany maintained its view that the project at issue was not covered by Community law relating to public contracts and sent the Commission the contracts referred to at paragraphs 10 and 11 of this judgment, without the annexes.

19 By letter of 18 October 2006, the Commission sent the Federal Republic of Germany a reasoned opinion by which it requested the latter to comply with its obligations under the Community rules relating to public contracts within a period of two months from the date of receipt of that opinion.

20 By letter of 12 December 2006, the Federal Republic of Germany again denied any infringement of Community law relating to public contracts, contending furthermore that, in any event, the infringement procedure was inadmissible because, on 1 December 2005, that is even before the letter of formal notice was sent, the construction of the exhibition halls had been completed and the halls handed over to the City of Cologne.

21 In view of the stance taken, the Commission decided to bring the present action.

The action

Admissibility

22 The Federal Republic of Germany raises a plea of inadmissibility on the ground that, when the period prescribed in the reasoned opinion expired, namely on 18 December 2006, the contract in question had already been completely performed inasmuch as the building works referred to in the action had long since been completed. The Federal Republic of Germany refers in that regard to an acceptance protocol ('Übernahmeprotokoll') drawn up, following three days of negotiations, on 30 November 2005 — thus even before the letter of formal notice was issued — between the City of Cologne and GKM-GbR, which showed that the buildings in question had been duly handed over by GKM-GbR on that date and accepted by the City of Cologne. The buildings had, moreover, been used in accordance with their intended purpose since January 2006. In fact, the official inauguration of the international furniture fair was held in those halls on 16 January 2006.

23 In that regard, it must be noted that the Court has consistently held in relation to public contracts that an action for failure to fulfil obligations is inadmissible if, when the period prescribed in the reasoned opinion expired, the contract in question had already been completely performed (see, inter alia, Case C-394/02 *Commission* v *Greece* [2005] ECR I-4713, paragraph 18 and case-law cited, and Case C-237/05 *Commission* v *Greece* [2007] ECR I-8203, paragraph 29).

24 In the present case it is necessary, therefore, to ascertain whether, when the period prescribed in the reasoned opinion expired, namely on 18 December 2006, the contract

in question was — at least in part — still being performed or whether, on the contrary, that contract had already been fully completed and, therefore, had been performed.

25 By the terms 'contract in question' or, adopting a slightly different formulation used in the case-law, 'contract at issue' (see, for example, Joined Cases C-20/01 and C-28/01 *Commission* v *Germany* [2003] ECR I-3609, paragraph 33 and case-law cited), the Court is referring to the whole of the project at issue, viewed in its general context and by reference to its fundamental characteristics.

26 In this instance, it is common ground that the ultimate objective of the project connecting the City of Cologne with GKM-GbR and with KölnMesse was to provide KölnMesse — of which the City of Cologne is the major shareholder — for an extended period with exhibition halls built by GKM-GbR. At the same time, the City of Cologne committed itself by a lease to making monthly payments to GKM-GbR of a certain sum of money by way of rent, whereas the funds transferred were, in fact, used to finance the building works in question, as the Federal Republic of Germany, moreover, admits.

27 The aim of and detailed arrangements for the implementation of this project are evident, in particular, in the 'main' lease dated 6 August 2004 — by which GKM-GbR agreed to carry out the building works in accordance with the detailed specifications of the City of Cologne, with a view to their being let — as well as in the underlease and in the 'implementation agreement relating to the underlease' by which the City of Cologne granted KölnMesse the right to use the buildings that were to be constructed.

28 The project at issue thus has a 'construction' aspect and a 'lease' or 'financing' aspect. In that regard, irrespective of which is the dominant aspect or the main purpose of the project, and whether the City of Cologne simply acted as guarantor in relation to GKM-GbR — questions which fall to be considered as part of the substance of the case — it must be held that these various aspects of the project form an indissociable whole. The building works, as conceived and carried out, would have had no reason to proceed in the absence of the lease, and the lease could not have existed in isolation without the future execution of the works provided for in that contract. Therefore, the Court cannot

accept the proposition of the Federal Republic of Germany that the main contract contains parts that are relevant and parts that are irrelevant or neutral in relation to the present action.

29 Accordingly, the project at issue must be viewed as a whole and by reference to all its parameters and component parts for the purposes of assessing whether the action is admissible.

30 Thus, the contract in question, that is the project at issue viewed as a whole, had not been completely performed when the period prescribed in the reasoned opinion expired merely because the building works in question had been completed. In fact, the 'lease' aspect of that project was ongoing at that time.

31 In view of the foregoing considerations, it must be held that the Commission's action is admissible.

Substance

Arguments of the parties

32 The Commission submits that there is no contractual relationship between KölnMesse and GKM-GbR, or any rights or obligations. In the Commission's opinion, the only body that can possibly be regarded as the other party to the contract with GKM-GbR is the City of Cologne. Under the main contract, only the City of Cologne entered into genuine commitments vis-à-vis GKM-GbR. Furthermore, KölnMesse could not have

carried out a building project of this nature without the intervention of the City of Cologne, and GKM-GbR would not have agreed to carry out that project without the financial cover provided by the City of Cologne. Moreover, KölnMesse did not become the debtor vis-à-vis GKM-GbR.

33 As regards the legal nature of the project at issue, the Commission submits that this constitutes a public works contract. It states, first, that the City of Cologne — the contracting authority in its capacity as local authority — concluded in writing a contract for pecuniary interest with GKM-GbR, acting as contractor, for execution by the latter of works whose value was considerably higher than the threshold set by Community rules, and which were required to be handed over to the contracting authority. Second, as regards the purpose of the project, the execution of the works in question, which were intended exclusively for the organisation of trade fairs, was not done on GKM-GbR's own initiative. It is also apparent from the main contract that those works were executed in accordance with detailed specifications imposed by the City of Cologne, and that those specifications were not merely a description of the fixtures and fittings in the context of a lease. In this instance, therefore, works were executed in accordance with the requirements specified by the contracting authority, as referred to in the last clause of Article 1(a) of Directive 93/37.

34 The Commission submits that that conclusion is not altered by the fact that the main contract also includes matters inherent in a lease, namely the grant of the right to use the buildings in return for a series of payments constituting the consideration for their construction. In fact, it is not possible to distinguish a 'works' part of that contract from a 'lease' or 'financing' part, in the sense that the first part would be covered by Directive 93/37 and the second, as the provision of services, by Directive 92/50. In any event, the Commission notes that, according to the case-law of the Court, it is the main purpose of the contract which determines its classification and, in this instance, that main purpose is the execution of works.

35 Lastly, the Commission states that, according to the case-law of the Court, it is irrelevant to the classification of the project in question as a public works contract whether the City of Cologne intended to use the buildings to be constructed itself or to

make them available to a third party, and whether it will be the owner of the land and of the exhibition halls when the main contract comes to an end. The Commission claims that the City of Cologne should, therefore, have initiated a procedure for the award of the contract in question in accordance with the provisions of Articles 7(4) and 11 of Directive 93/37.

36 The Federal Republic of Germany contends that the only body that can possibly be regarded as the other party to the contract with GKM-GbR is KölnMesse, since, in reality, those are the two companies linked by the main contractual relationship. In terms of a functional assessment of the situation as a whole, KölnMesse alone is the lessee and GKM-GbR the lessor by virtue of the underlease, which was provided for and concluded at the same time as the main contract, is worded, in essence, in identical terms, and by which all the rights and obligations under the main contract were assigned to KölnMesse.

37 In addition, it is KölnMesse which, with the aim of taking a lease of the exhibition halls which were required to be built on land belonging to it, conceived and implemented the project at issue, and it is KölnMesse which ultimately has the right to use the buildings concerned and pays the agreed consideration for that. The absence of direct contractual links between KölnMesse and GKM-GbR is the result of the triangular operation selected, from a functional point of view, since the City of Cologne was included in the contractual relationship between the two other entities as a guarantor, and not as a debtor who would be jointly liable.

38 The Federal Republic of Germany takes the view, therefore, that it is KölnMesse alone — as, in reality, the party to the contract with GKM-GbR — which should have been assessed according to the criteria determining whether a body falls within the definition of contracting authority for the purposes of the possible application of Community rules relating to public contracts, instead of the City of Cologne. The Commission's action relates exclusively to the City of Cologne and should, therefore, be dismissed on that ground.

39 As regards the legal nature of the project at issue, the Federal Republic of Germany maintains that the contract concluded by the City of Cologne and GKM-GbR is not a works contract but merely a financial guarantee, that is an agreement ancillary to the main contract concluded by GKM-GbR and KölnMesse.

40 For the purposes of the legal classification of a contract comprising several aspects capable of falling under different Community rules relating to public contracts, it is necessary, according to the case-law of the Court, to take into account the main object of the contract in question, and that object must be the achievement of a work in order for the contract to be deemed to be a public works contract. The Federal Republic of Germany refers in that regard to Case C-331/92 *Gestión Hotelera Internacional* [1994] ECR I-1329. However, in this instance, in the opinion of the Federal Republic of Germany, the achievement of a work was not the main object of the contracts. Neither the main contract nor the underlease is in any way a 'building contract'; both are, in terms of form and substance, 'leases' under which the other party to the contract obtains, for pecuniary interest, nothing more than a right to use the buildings concerned. From a functional point of view, the contractual arrangements in question, with the intervention of the City of Cologne, were designed to finance the project conceived by KölnMesse.

41 The fact that the main object of the contract in question was the lease of the buildings concerned is also demonstrated (i) by a comparison of the cost of the lease over a term of 30 years — approximately EUR 600 million — and the cost of the buildings' construction — only approximately EUR 235 million — and (ii) by the absence of any contractual provision for an option to purchase or an obligation to repurchase those buildings on the part of the City of Cologne or KölnMesse at the end of the term of the lease. To that extent, GKM-GbR ultimately bears the financial risk of the project at issue.

42 In consequence, according to the Federal Republic of Germany, whether the main object of the main contract is the service of letting or that of financing, both are situations which fall within the scope of Directive 92/50, the possible infringement of which is not the subject-matter of these proceedings.

Findings of the Court

43 For the purposes of determining, first, which body must be regarded as being the other party to the contract with GKM-GbR and must, therefore, be assessed in the light of the criteria defining the concept of contracting authority, it must be held that the Commission's action relates to the 'main' lease concluded on 6 August 2004 by the City of Cologne and GKM-GbR.

44 Nevertheless, the Federal Republic of Germany claims that, from the point of view of a functional assessment of the situation as a whole, KölnMesse is, in reality, the other party to the contract with GKM-GbR and the true lessee by virtue of the underlease. It is KölnMesse which conceived and implemented the project at issue, which ultimately has the right to use the buildings concerned and which pays the agreed consideration.

45 It is common ground, however, that the main contract of 6 August 2004 was concluded by GKM-GbR and the City of Cologne without any mention of KölnMesse. It must also be noted that the negotiations for the conclusion of this contract were led by the City of Cologne in its own name and on its own account. Furthermore, the detailed specifications for the execution of the works in question were incorporated into that contract by the City of Cologne, and the undertakings given by GKM-GbR were given to the City of Cologne alone. Likewise, the negotiations which led to the drawing-up of the acceptance protocol in respect of the works in question, dated 30 November 2005, were led by the City of Cologne, and the protocol was signed by the City of Cologne and by GKM-GbR without any mention of KölnMesse.

46 Therefore, KölnMesse does not appear or intervene in any way in the contractual relationship between GKM-GbR and the City of Cologne.

47 The finding that there is no contractual relationship between KölnMesse and GKM-GbR is not altered by the existence of the contract for the sale by KölnMesse to GKM-GbR of the land on which the buildings in question were built. That contract is not relevant for the purposes of the project at issue, which consists in the construction and lease of those buildings.

48 Likewise, the underlease of 11 August 2004 and the agreement for the implementation of that underlease of the same date cannot alter the aforementioned finding, in so far as those contracts are exclusively concerned with relations between KölnMesse and the City of Cologne, and have no effect at all on contractual relations between the City of Cologne and GKM-GbR or on their reciprocal undertakings.

49 Nor is it relevant that the project at issue may have been initially conceived by KölnMesse, since there is no reference at all to KölnMesse in the main contract with GKM-GbR.

50 Also irrelevant is the fact that the works in question were intended to be used for the activities of KölnMesse, which ultimately has the right to use them in return for monthly payments (see, to that effect, Case C-220/05 *Auroux and Others* [2007] ECR I-385, paragraphs 33, 35 and 42). It should, moreover, be noted in that context that it is apparent from the documents of 8 December 2003 and 14 July 2004 headed 'letter of intent' — which have not been contested by the Federal Republic of Germany — that the City of Cologne agreed to accept financial responsibility for the project at issue in the event that, after 2012, KölnMesse is not in a position to pay the rent.

51 Accordingly, a functional interpretation of the project at issue, such as that advocated by the Federal Republic of Germany, cannot alter the finding that, on the basis of the main contract, the City of Cologne is the only other party to the contract with GKM-GbR and is regarded and accepted as such by GKM-GbR; nor can it lead to KölnMesse being substituted for the City of Cologne in the performance of the latter's contractual obligations.

52 Therefore, it must be concluded that, in relation to the project at issue, the only other party to the contract with GKM-GbR is the City of Cologne. In its capacity as local authority, the City of Cologne constitutes a contracting authority within the meaning of Article 1(b) of Directive 93/37.

53 Second, it is necessary to consider the legal classification of the project at issue for the purposes of ascertaining whether it constitutes a public works contract within the meaning of the Community legislation.

54 In that regard, it must be borne in mind first of all that, according to the case-law of the Court, that legal classification falls under Community law and the classification given under national law is irrelevant for that purpose (see, to that effect, *Auroux and Others*, paragraph 40 and case-law cited). Likewise, the classification of a contract given by the contracting parties is not decisive either.

55 Next, it must be pointed out that the definition of 'public works contract' in Article 1(a) of Directive 93/37 includes all operations in which a contract for pecuniary interest, irrespective of its formal classification, is concluded between a contracting authority and a contractor and has as its object the execution by the latter of a 'work' within the meaning of Article 1(c) of the directive. The essential criterion in that respect is that the work should be executed in accordance with the requirements specified by the contracting authority; the means of that execution are immaterial.

56 As regards the object of the project at issue, it must be noted that the main contract, concluded on 6 August 2004 by the City of Cologne and GKM-GbR, is formally described as a 'lease' and does, in fact, contain certain elements of a lease. However, as at 6 August 2004, the building works in question had not even started. Consequently, that contract could not have had as its immediate object the lease of buildings whose construction had not yet begun. Therefore, the main purpose of that contract could,

logically, only be the construction of those buildings which were subsequently required to be handed over to the City of Cologne under the terms of a contractual relationship described as a 'lease'.

57 According to the case-law of the Court, where a contract contains elements relating both to a public works contract and another type of public contract, it is the main purpose of the contract which determines the Community rules applicable.

58 It must be held, moreover, that the works concerned were executed in accordance with the very detailed specifications set out by the City of Cologne in the main contract. It is apparent from that contract and its annexes that those specifications, relating to a precise description of the buildings to be constructed, their quality and their fixtures and fittings, far exceed the usual requirements of a tenant in relation to newly constructed premises of a certain size.

59 Accordingly, it must be concluded that the main contract had as its main object the construction of the exhibition halls concerned in accordance with the requirements specified by the City of Cologne. Moreover, those halls constitute a 'work' within the meaning of Article 1(c) of Directive 93/37 in so far as they are sufficient of themselves to fulfil an economic function, and their value is far higher than the threshold laid down under Article 6 of that directive. In addition, that contract was concluded for pecuniary interest, since GKM-GbR acted in this case as a contractor, irrespective of the fact that it arranged for execution of that work through sub-contracting (see, to that effect, Case C-399/98 *Ordine degli Architetti and Others* [2001] ECR I-5409, paragraph 90), and the City of Cologne is a contracting authority. This contract must therefore be classified as a public works contract within the meaning of Article 1(a) of Directive 93/37.

60 That conclusion is not challenged by the Federal Republic of Germany's argument that the total amount to be paid to GKM-GbR by way of rent, amounting ultimately to

approximately EUR 600 million, is much higher than the cost of construction of the works — approximately EUR 235 million — proving that the 'services' element of the project at issue is predominant.

61 In fact, the decisive element for the purposes of the classification of a public contract such as that at issue here is the main object of that contract, not the amount paid to the contractor or the arrangements for payment. In addition, a direct comparison of the two amounts referred to above, in absolute terms, is not possible because the approximate sum of EUR 600 million will be paid in a series of monthly instalments over a period of almost 30 years, whereas the sum of EUR 235 million corresponds to the value of the cost of the works on their completion at the end of 2005. In actual fact, the sum of EUR 600 million, at the values current when the works were completed, is very close to EUR 235 million. In any event, even if part of that sum of EUR 600 million were to represent the consideration for an element inherent in the letting, that part would necessarily be insignificant and cannot alter the classification of the contract concerned.

62 Likewise, the fact that the main contract may not provide for an option or obligation on the part of the City of Cologne or KölnMesse to repurchase the buildings constructed is irrelevant to the classification of the contract in question (see, to that effect, *Auroux*, paragraph 47).

63 In the light of all the foregoing considerations, it must be concluded that, viewed in the general context of the project at issue, the main contract of 6 August 2004 constitutes a public works contract within the meaning of Article 1(a) of Directive 93/37 which should have been awarded in accordance with the rules of Articles 7(4) and 11 of that directive. The Commission's action must, therefore, be upheld.

64 Accordingly, it must be held that the Federal Republic of Germany has failed to fulfil its obligations under Articles 7(4) and 11 of Directive 93/37 by reason of the fact that the

City of Cologne concluded the contract of 6 August 2004 with GKM-GbR without applying the procedure for the award of public contracts laid down by those provisions.

Costs

65 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Federal Republic of Germany has been unsuccessful, the Federal Republic of Germany must be ordered to pay the costs.

On those grounds, the Court (Fourth Chamber) hereby:

1. **Declares that the Federal Republic of Germany has failed to fulfil its obligations under Articles 7(4) and 11 of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts by reason of the fact that the City of Cologne concluded the contract of 6 August 2004 with Grundstücksgesellschaft Köln Messe 15 bis 18 GbR, now Grundstücksgesellschaft Köln Messe 8-11 GbR, without applying the procedure for the award of public contracts laid down by those provisions;**

2. **Orders the Federal Republic of Germany to pay the costs.**

[Signatures]