JUDGMENT OF THE COURT (Third Chamber)

11 October 2007 *

In Case C-241/06,

REFERENCE to the Court under Article 234 EC by the Hanseatisches Oberlandesgericht in Bremen (Germany), made by decision of 18 May 2006, received at the Court on 30 May 2006, in the proceedings

Lämmerzahl GmbH

v

Freie Hansestadt Bremen,

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,

* Language of the case: German.

Advocate General: E. Sharpston,
Registrar: J. Swedenborg, Administrator,

having regard to the written procedure and further to the hearing on 28 March 2007,

after considering the observations submitted on behalf of:

— Lämmerzahl GmbH, by A. Kus, Rechtsanwalt,

— the Freie Hansestadt Bremen, by W. Dierks and J. van Dyk, Rechtsanwälte,

— the Republic of Lithuania, by D. Kriaučiūnas, acting as Agent,

— the Republic of Austria, by M. Fruhmann, acting as Agent,

— the Commission of the European Communities, by X. Lewis and B. Schima, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 June 2007,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33), as amended by 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) ('Directive 89/665').

2 The reference was made in the context of proceedings between Lämmerzahl GmbH ('Lämmerzahl') and the Freie Hansestadt Bremen (Free Hanseatic City of Bremen, Germany) ('Bremen') concerning a procedure for the award of a public contract.

Legal context

Community law

3 Article 1 of Directive 89/665 provides:

'1. The Member States shall take the measures necessary to ensure that, as regards contract award procedures falling within the scope of Directives 71/305/EEC, 77/62/

EEC and 92/50/EEC, decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in the following Articles and, in particular, Article 2(7) on the grounds that such decisions have infringed Community law in the field of public procurement or national rules implementing that law.

...

3. The Member States shall ensure that the review procedures are available, under detailed rules which the Member States may establish, at least to any person having or having had an interest in obtaining a particular public supply or public works contract and who has been or risks being harmed by an alleged infringement. In particular, the Member States may require that the person seeking the review must have previously notified the contracting authority of the alleged infringement and of his intention to seek review.'

4 Under Article 5(1) of Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1), as amended by Commission Directive 2001/78/EC of 13 September 2001 (OJ 2001 L 285, p. 1) ('Directive 93/36'):

'1. (a) Titles II, III and IV and Articles 6 and 7 shall apply to public supply contracts awarded by:

(i) the contracting authorities referred to in Article 1(b), ... where the estimated value net of value-added tax (VAT) is not less than the equivalent in [euros] of 200 000 special drawing rights (SDRs);

...

(b) This Directive shall apply to public supply contracts whose estimated value equals or exceeds the threshold concerned at the time of publication of the notice in accordance with Article 9(2).

...'

5 According to the first sentence of Article 9(4) under Title III of Directive 93/36:

'The notices shall be drawn up in accordance with the models given in Annex IV and shall specify the information requested in those models.'

6 The model contract notice in Annex IV to Directive 93/36 includes the following references:

'(II.2) Quantity or scope of the contract

(II.2.1) Total quantity or scope (*including all lots and options, if applicable*)

...

(II.2.2) Options *(if applicable).* Description and time when they may be exercised *(if possible)*

...

(II.3) Duration of the contract or time-limit for completion

Either: Period in month/s ... and/or days ... *(from the date of award of the contract)*

Or: Starting ... and/or ending ... *(dd/mm/yyyy).'*

7 Article 10(1) and (1a) of Directive 93/36 provides:

'1. In open procedures the time-limit for the receipt of tenders, fixed by the contracting authorities, shall not be less than 52 days from the date of dispatch of the notice.

1a. The time-limit for receipt of tenders laid down in paragraph 1 may be replaced by a period sufficiently long to permit responsive tendering, which, as a general rule, shall be not less than 36 days and in any case not less than 22 days, from the date on which the contract notice was dispatched, if the contracting authorities have sent the indicative notice provided for in Article 9(1), drafted in accordance with the model

in Annex IV A (Prior information), to the *Official Journal of the European Communities* within a minimum of 52 days and a maximum of 12 months before the date on which the contract notice provided for in Article 9(2) was dispatched to the *Official Journal of the European Communities*, provided that the indicative notice contained, in addition, at least as much of the information referred to in the model notice in Annex IV B (Open procedure) as was available at the time of publication of the notice.'

National law

8 Paragraph 100(1) of the Gesetz gegen Wettbewerbsbeschränkungen (Law against restrictions on competition, 'the GWB') provides:

'This part [of the GWB] applies only to contracts which reach or exceed the values set out in the regulations provided for by Paragraph 127 (threshold values).'

9 Paragraph 107(3) of the GWB provides:

'The application is inadmissible where the applicant was already aware during the award procedure of the alleged infringement of the procurement rules and did not immediately complain to the awarding authority. The application is also inadmissible where no complaint is raised about infringements of the procurement rules that are identifiable on the basis of the contract notice with the awarding authority by, at the latest, the end of the period stipulated in the contract notice for bidding or for applications to participate in the award procedure.'

10 Paragraph 127(1) of the GWB provides:

'The Federal Government, with the agreement of the Bundesrat, may adopt rules ... for transposing into German law the threshold values of European Community directives relating to the coordination of procedures for the award of public service contracts.'

11 Paragraph 2(3) of the Vergabeverordnung (Public procurement regulation), in the version in force at the date of award of the public contract at issue in the main proceedings, provided:

'The threshold amount is:

...

for all other supply contracts or service contracts: EUR 200 000.'

The dispute in the main proceedings and the order for reference

12 In March 2005 Bremen issued a national call for tenders regarding standard software for the computerised handling of cases in the adult social service and economic aid field.

13 The time-limit for submission of tenders stated in the contract notice expired on 12 April 2005 at 3p.m.

14 The contract notice relating to that call for tenders did not contain any indication of the estimated value of the contract or of its quantity or scope.

15 The contract notice stated that the contract documents concerning the contract at issue in the main proceedings could be downloaded from Bremen's internet site, the address of which it provided. Those contract documents included the following statement, under the heading 'Quantities':

'Approximately 200 employees in the economic aid area and approximately 45 employees in adult social services, distributed in a decentralised way in 6 social centres, and approximately 65 employees in the central units will work with the system.'

16 However, the application form provided by Bremen for tenderers to submit their prices did not include the total number of licences sought and merely required the unit price of each licence to be given.

17 In response to Lämmerzahl's initial request, Bremen, by letter of 24 March 2005, gave Lämmerzahl certain information, without however indicating the number of licences to be acquired.

18 By a further enquiry Lämmerzahl asked Bremen to indicate to it whether the contracting authority sought to acquire 310 licences, a number arrived at by adding up the numbers stated in the contract documents, namely 200, 45 and 65, and whether a tender in figures should be drawn up relating to the total number of licences. By letter of 6 April 2005, Bremen replied to Lämmerzahl that it should enter 'the overall price (total price of the costs of supply, costs of maintenance and services)'.

19 On 8 April 2005, Lämmerzahl submitted a tender in the sum of EUR 691 940 gross or EUR 603 500 net.

20 By letter of 6 July 2005, Bremen informed Lämmerzahl that its tender had not been successful because comparison of the tenders submitted had shown that it was not the most economically advantageous.

21 On 14 July 2005, Lämmerzahl sent a letter to the contracting authority in which it claimed, first, that no European call for tenders had been organised and, secondly, that the software tests which it had proposed had not been carried out correctly.

22 On 21 July 2005, Lämmerzahl applied to the Vergabekammer der Freien Hansestadt Bremen (Public Procurement Board of the Free Hanseatic City of Bremen) for a review procedure, claiming that a European tender should have been organised since the threshold of EUR 200 000 had been exceeded. It maintained that it had come to that conclusion only after obtaining legal advice on 14 July 2005 and that, for that reason, its application should be treated as having been brought within the time-limit. As regards the substance, it alleged that the testing procedure had not been properly carried out by the contracting authority.

23 By decision of 2 August 2005, the Vergabekammer der Freien Hansestadt Bremen dismissed the application for review as inadmissible. It stated that, even if the threshold figure had been exceeded, the application was inadmissible under the second sentence of Paragraph 107(3) of the GWB, as Lämmerzahl had been in a position to identify the breach complained of in its application from the contract notice. The Vergabekammer also held that, since the application was out of time, Lämmerzahl was also precluded from seeking a remedy from the review bodies with jurisdiction for public procurement.

24 Lämmerzahl complained to the Hanseatisches Oberlandesgericht in Bremen (Hanseatic Higher Regional Court, Bremen). In support of its appeal, it submitted that, contrary to the position adopted by the Vergabekammer der Freien Hansestadt Bremen, it could not be ascertained from the contract notice that the procedure chosen was contrary to the law on the award of public contracts. Bremen replied that, in view of its experience, Lämmerzahl should have noticed that the threshold had been exceeded. Lämmerzahl also repeated its allegation that the testing procedure had been inadequate and submitted that the tender accepted contained an unlawful combined costing arrangement, which should have led to the exclusion of that tender. Bremen disputed those two allegations.

25 Lämmerzahl applied for the suspensory effect of the appeal to be extended pending delivery of judgment on the substance. By decision of 7 November 2005, the Hanseatisches Oberlandesgericht in Bremen rejected that application as unfounded. In that decision, it concurred with the position of the Vergabekammer der Freien Hansestadt Bremen, according to which, in applying the time-bar rule provided for in the second sentence of Article 107(3) of the GWB, Lämmerzahl was to be treated as if the value of the contract at issue was less than the threshold figure of EUR 200 000, which deprived Lämmerzahl of the right to seek a review.

26 Bremen then awarded the contract to Prosoz Herten GmbH, with which it concluded a contract on 6 and 9 March 2006.

27 In the order for reference, the Hanseatisches Oberlandesgericht in Bremen does not state the value of the contract concluded between Bremen and Prosoz Herten GmbH, but indicates that 'all the tenderers' bids for the first contract option were over EUR 200 000 (between EUR 232 452.80 and EUR 887 300, or EUR 3 218 000) and for the second option only one of the four was under the threshold figure with a tender of EUR 134 050 (excluding licence costs), while the other tenders varied between EUR 210 252.80 and EUR 907 300, or EUR 2 774 800 ...'.

28 Before the Hanseatisches Oberlandesgericht in Bremen, Lämmerzahl maintained that the position adopted by that court in its decision of 7 November 2005 made access to legal remedies excessively difficult, contrary to Directive 89/665.

29 That court states in its order for reference that the specific problem in the case in the main proceedings is the fact that, in the case of breaches of public procurement law which directly affect the value of the contract and, accordingly, the threshold figure, the time-limit applied under the second sentence of Article 107(3) of the GWB leads, according to the case-law of the Kammergericht (Berlin Court of Appeal) which it approved and expanded in its decision of 7 November 2005, to a general curtailment of legal protection.

30 According to the Hanseatisches Oberlandesgericht in Bremen, it follows that, if the estimated contract price is, from the outset, determined unlawfully at too low a level,

the person against whom the time-bar is applied loses not only the right to challenge the choice of procedure or the estimate of the contract price, but also the right to be heard with regard to all other infringements which, if considered in isolation, would not be subject to the effects of being out of time and could be reviewed if the contracting authority had proceeded in accordance with the rules.

31 The Hanseatisches Oberlandesgericht in Bremen is uncertain whether such an application of the national time-bar rules undermines the practical effectiveness of Directive 89/665, and in particular whether it is compatible with Article 1 of that directive.

32 In those circumstances, the Hanseatisches Oberlandesgericht in Bremen decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is it compatible with Directive 89/665, in particular Article 1(1) and (3), for a tenderer to be generally barred from gaining access to a review of a contracting authority's decision to award public contracts because the tenderer through its own fault did not raise an irregularity in the award procedure within the time-limit laid down for that purpose in national law, where the irregularity relates

(a) to the form of invitation to tender selected

or

(b) to the correctness of the determination of the contract price (the estimate is obviously wrong or the method of determination is not sufficiently transparent)

and, on the basis of the contract price as correctly determined or to be determined, it would be possible to review other irregularities in the award procedure that — considered in isolation — would not be time-barred?

(2) Should the details in a tender notice relevant to determination of the contract price be subject to any special requirements so as to enable the conclusion to be drawn from irregularities relating to the estimated contract price that legal protection is generally excluded even if the contract price correctly estimated or to be estimated exceeds the relevant threshold value?'

The questions referred for a preliminary ruling

The second question

33 By its second question, which it is appropriate to examine first, the national court asks, essentially, what requirements are imposed by Community law regarding, first, the information as to the estimated value of a public contract which must appear in the contract notice and, second, the remedies provided for should that information not be provided.

Arguments of the parties

34 Lämmerzahl does not specifically indicate precisely what information as to the value of the contract must appear in the contract notice, but it does insist that, for the

purpose of applying a time-limit for seeking review, information cannot be relied on against the person concerned which the contracting authority did not included in the contract notice.

35 The Lithuanian Government is of the view that the contracting authority is required to provide in the contract notice all information concerning the amount of the contract, enabling tenderers objectively to determine whether the value of the contract is above or below the threshold provided for by the Community directives on public procurement.

36 Following similar reasoning, the Commission of the European Communities submits that the conditions for a limitation period to begin to run, to which the contract notice is subject under national legislation, must be applied by the national court in such as way that it is not rendered impossible or excessively difficult for the person concerned to exercise the rights conferred on him by Directive 89/665.

37 Contrary to this reasoning, Bremen and the Austrian Government consider that the Community directives do not require the estimated value of the contract to be stated in the contract notice, such a reference not being desirable from the point of view of the proper working of competition.

Findings of the Court

38 According to the material in the case-file, it appears that the contract at issue in the main proceedings is, if not a supply contract, certainly a mixed supply contract and service contract in which the value of the supply predominates. In that event, the relevant provisions are those of the Community directives on public supply contracts, not those on public service contracts.

39 For public supply contracts within the scope of Directive 93/36, the content of the contract notice was governed at the material time by the first sentence of Article 9(4) of and Annex IV to Directive 93/36, those provisions having been replaced subsequently by Article 36(1) of and Annex VII A 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) and by Annex II to Commission Regulation (EC) No 1564/2005 of 7 September 2005 establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council (OJ 2005 L 257, p. 1).

40 The first sentence of Article 9(4) of Directive 93/36 requires that the notices be drawn up in accordance with the models given in Annex IV to that directive and specify the information requested in those models.

41 The model contract notice in Annex IV provides for reference to the total quantity or scope of the contract (including all lots and options, if applicable).

42 Consequently, a contract notice concerning a public supply contract within the scope of Directive 93/36 must, in accordance with that directive, state the total quantity or scope of the contract to which it relates.

43 If, in a specific case, that requirement is not fulfilled, there is an infringement of Community law in the field of public procurement within the meaning of Article 1(1) of Directive 89/665, such as to give rise to a right of review in accordance with that provision.

44 Consequently, the answer to the second question must be that, in accordance with Article 9(4) of and Annex IV to Directive 93/36, the contract notice concerning a contract within the scope of that directive must state the total quantity or scope of that contract. The absence of such an indication must be capable of being reviewed under Article 1(1) of Directive 89/665.

The first question

45 By its first question, the national court seeks essentially to resolve two problems. First, it asks under what conditions does Community law permit national law to impose a time-limit for applications for review concerning the choice of procedure for awarding a public contract or the estimate of the value of the contract, in other words, acts which occur in the first stages of an award procedure. Second, in the event that such a time-bar rule is permitted, that court wishes to ascertain whether Community law permits it to be extended generally to cover remedies against decisions of the contracting authority, including those occurring in later stages of an award procedure.

Arguments of the parties

46 Lämmerzahl submits that Article 107(3) of the GWB imposes time-limits only for infringements which are 'identifiable on the basis of the contract notice', a concept which, according to it, should be interpreted strictly. It submits that, in the case in the main proceedings, it was impossible to ascertain from the information in the contract notice that the estimated value of the contract exceeded the threshold in the Community directives and, accordingly, that the national award procedure had

been chosen wrongly. That its claim was held to be time-barred, even though it could not have ascertained the existence of an infringement of the Community rules on the information provided by the contracting authority, deprived it of an effective remedy and was contrary to Directive 89/665.

47 The Lithuanian Government states likewise that, in accordance with that directive, the persons concerned must be guaranteed an effective remedy. Consequently, where those persons have not received objective and complete information concerning the volume of the public contract at issue, the limitation period can only start to run from the time when they knew or could have known that the procedure chosen was inappropriate. If there is any doubt as to whether the threshold for the application of the Community directives has been reached, Directive 89/665 should be applied.

48 The Austrian Government and the Commission consider that national rules such as those at issue in the main proceedings comply with Directive 89/665, subject to certain conditions. The Austrian Government is of the view that those rules are compatible with that directive only in so far as the limitation period they determine is reasonable and the contracting authority has not, by its conduct, rendered impossible or excessively difficult the exercise of the right to a remedy. For its part, the Commission contends that such national rules are compatible with Community law provided that the tenderer has an effective remedy which allows him to bring a legal action against any infringement of the fundamental rules flowing from the EC Treaty.

49 Bremen is of the view that Directive 89/665, as interpreted by the Court of Justice, permits Member States to determine limitation periods which apply to disputes concerning procedures for the award of public contracts. Article 107(3) of the GWB complies with that directive, even where the contracting authority has given

incorrect indications for the purpose of determining the value of the contract. According to Bremen, if it is possible for the tenderer to arrive at a higher estimate of the contract, on the basis of information appearing in the contract notice or even owing to the absence of relevant information, and he does not make a complaint, that does not mean that his right to seek a remedy is excluded in principle.

Findings of the Court

50 As regards the first aspect of that question, it should be pointed out that Directive 89/665 does not preclude national legislation which provides that any application for review of a contracting authority's decision must be commenced within a time-limit laid down to that effect and that any irregularity in the award procedure relied upon in support of such application must be raised within the same period, if it is not to be out of time, with the result that, when that period has passed, it is no longer possible to challenge such a decision or to raise such an irregularity, provided that the time-limit in question is reasonable (Case C-470/99 *Universale-Bau and Others* [2002] ECR I-11617, paragraph 79, and Case C-327/00 *Santex* [2003] ECR I-1877, paragraph 50).

51 That position is based on the consideration that the full implementation of the objective sought by Directive 89/665 would be undermined if candidates and tenderers were allowed to invoke, at any stage of the award procedure, infringements of the rules of public procurement, thus obliging the contracting authority to restart the entire procedure in order to correct such infringements (*Universale-Bau*, paragraph 75).

52 On the other hand, the national time-limits for bringing an action, including the detailed rules for their application, should not in themselves be such as to render virtually impossible or excessively difficult the exercise of any rights which the person concerned derives from Community law (*Santex*, paragraph 55; see also, to that effect, *Universale-Bau*, paragraph 73).

53 It is therefore necessary to examine whether the application of a time-bar rule such as that at issue in the main proceedings may be considered as being reasonable or, on the contrary, as rendering virtually impossible or excessively difficult the exercise of the rights which the person concerned derives from Community law.

54 It is clear from the case-file that, by repeated questions and its own initiatives, Lämmerzahl sought to confirm its conclusion, made on the basis of the tender documentation and with a degree of uncertainty, that the contract concerned 310 licences and training events. However, even the last response from the contracting authority, namely its letter of 6 April 2005, was not very clear, ambiguous and evasive in that regard.

55 A contract notice lacking any information as to the estimated value of the contract, followed by evasive conduct by the contracting authority in response to the questions of a potential tenderer such as that at issue in the main proceedings, must be considered, in view of the existence of a limitation period, as rendering excessively difficult the exercise by the tenderer concerned of the rights conferred on him by Community law (see, to that effect, *Santex*, paragraph 61).

56 It follows that, even if a national time-bar rule, such as that in the second sentence of Article 107(3) of the GWB, may in principle be considered to comply with Community law, its application to a tenderer in circumstances such as those at issue in the main proceedings does not satisfy the requirement of effectiveness under Directive 89/665.

57 It must be concluded that Directive 89/665, particularly Article 1(1) and (3), precludes a time-bar rule laid down by national law being applied in such as way that

a tenderer is refused access to review concerning the choice of procedure for awarding a public contract or the estimate of the value of the contract, where the contracting authority has not clearly stated the total quantity or scope of the contract to the person concerned.

58 With regard to the second aspect of the first question, it must be noted that the second sentence of Article 107(3) of the GWB fixes as the end of the limitation period the expiry of the period for bidding or for applying to participate in the award procedure. Accordingly, it appears that that provision should be applied only to those irregularities capable of being identified before the expiry of those time-limits. Such irregularities may include an incorrect estimate of the value of the contract or a wrong choice of the procedure for the award of the contract. Conversely, they cannot relate to situations which by definition can only arise at later stages of the procedure for the award of the contract.

59 In the case at issue in the main proceedings, the applicant, in addition to lack of information concerning the value of the contract and wrong choice of the award procedure, relies on irregularities affecting the financial presentation of the successful tender and the tests carried out on the software proposed. However, an irregularity in the financial presentation of a tender can be discovered only after the opening of the envelopes containing the tenders. The same consideration applies to the tests of the software proposed. Irregularities of that type can therefore occur only after the limitation period fixed by a rule such as that at issue in the main proceedings has expired.

60 It is clear from the order for reference that, in its decision of 7 November 2005, the Hanseatisches Oberlandesgericht in Bremen applied the time-bar rule at issue in the main proceedings in such a way as to extend it to all decisions capable of being taken by the contracting authority throughout the procedure for the award of a public contract.

61 Such an application of that time-bar rule makes it virtually impossible for the person concerned to exercise the rights accorded him by Community law in respect of the irregularities which can occur only after the expiry of the time-limit for submitting tenders. Accordingly, it is contrary to Directive 89/665, in particular Article 1(1) and (3).

62 When applying domestic law the national court must, as far as is at all possible, interpret it in a way which accords with the objective of Directive 89/665 (see, to that effect, *Santex*, paragraphs 62 and 63).

63 Where an interpretation in accordance with the objective of Directive 89/665 is not possible, the national court must refrain from applying provisions of national law which are at variance with that directive (Case 106/77 *Simmenthal* [1978] ECR 629, paragraph 24, and *Santex*, paragraph 64). Article 1(1) of Directive 89/665 is unconditional and sufficiently precise to be relied on against a contracting authority (see, to that effect, Case C-15/04 *Koppensteiner* [2005] ECR I-4855, paragraph 38).

64 In the light of the foregoing, the answer to the first question must be that Directive 89/665, particularly Article 1(1) and (3), precludes a limitation period laid down by national law from being applied in such a way that a tenderer is refused access to a review concerning the choice of procedure for awarding a public contract or the estimate of the value of that contract, where the contracting authority has not clearly stated the total quantity or scope of the contract to the person concerned. Those provisions of the directive also preclude such a rule from being extended generally to cover the review of decisions of the contracting authority, including those occurring in stages of an award procedure after the end of that limitation period.

Costs

65 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:

1. **In accordance with Article 9(4) of and Annex IV to Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts, as amended by Commission Directive 2001/78/EC of 13 September 2001, the contract notice concerning a contract within the scope of that directive must state the total quantity or scope of that contract. The absence of such an indication must be capable of being reviewed under Article 1(1) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts.**

2. **Directive 89/665, as amended by Directive 92/50, particularly Article 1(1) and (3), precludes a limitation period laid down by national law from being**

applied in such a way that a tenderer is refused access to a review concerning the choice of procedure for awarding a public contract or the estimate of the value of that contract, where the contracting authority has not clearly stated the total quantity or scope of the contract to the person concerned. Those provisions of the directive also preclude such a rule from being extended generally to cover the review of decisions of the contracting authority, including those occurring in stages of an award procedure after the end of that limitation period.

[Signatures]