



24.10.2012

## NOTICE TO MEMBERS

**Subject: Petition 0427/2012 by Luigi Avella (Italian), on the privatisation of social security bodies in Italy**

### 1. Summary of petition

The Petition protests against the sale of real estate belonging to social security bodies privatised by means of Legislative Decree 509/94.

According to the petitioner, this operation, which involves cooperative businesses and cooperative consortiums, violates Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

### 2. Admissibility

Declared admissible on 19 July 2012. Information requested from Commission under Rule 202(6).

### 3. Commission reply, received on 24 October 2012

According to the petitioner, the social security bodies which have been privatised with Legislative Decree 509/94, are in the process of selling their real estate properties at market prices. This is having a negative impact on the situation of the tenants and, more in general, on the housing market because it brings about significant price increases. The petitioner highlights that these bodies, despite the privatisation process, are still to be qualified as public bodies and that they receive public funding in the form of social security contributions and in the context of the functioning of the Italian social security system.

The petitioner argues that these facts give rise to breaches of EU public procurement law and, in particular, of Directive 2004/18/EC. He suggests that, in this context, the Italian State should be required to ensure compliance with EU public procurement law.

### The Commission's observations

The objective of EU public procurement law is to ensure that public authorities in Member States purchase works, supplies and services in compliance with the fundamental freedoms of the Internal Market and with the principles stemming from the Treaty, including equal treatment and transparency.

It stems, in particular, from Article 1(2)(a) and Article 1(8) therein, that Directive 2004/18/EC applies to the award of public contracts by public authorities to economic operators offering on the market the execution of works, products and services. This means that Directive 2004/18/EC, as EU public procurement law in general, applies to purchases made by public authorities on the market.

On the other hand, EU public procurement law does not impose any obligation on public authorities with regard to the procedures and the modalities used to sell their own property on the market.

In the light of the above, and in the circumstances described by the petitioner, it is not possible to identify any violation of EU public procurement law and of Directive 2004/18/EC in connection with the practice of Italian social security bodies that consists in selling their own immovable properties on the market.