



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

4 June 2020*

(Reference for a preliminary ruling — Public procurement — Directive 2014/24/EU — Article 12(4) — Scope — Public contracts between entities within the public sector — Concept of ‘cooperation’ — Absence)

In Case C-429/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Koblenz (Higher Regional Court, Koblenz, Germany), made by decision of 14 May 2019, received at the Court on 5 June 2019, in the proceedings

Remondis GmbH

v

Abfallzweckverband Rhein-Mosel-Eifel

intervener:

Landkreis Neuwied,

THE COURT (Ninth Chamber),

composed of S. Rodin, President of the Chamber, D. Šváby (Rapporteur) and N. Piçarra, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Remondis GmbH, by C. Werkle, Rechtsanwalt,
- Abfallzweckverband Rhein-Mosel-Eifel, by G. Moesta and A. Gerlach, Rechtsanwälte,
- the Estonian Government, by N. Grünberg, acting as Agent,
- the Spanish Government, by M.J. García-Valdecasas Dorrego, acting as Agent,
- the Austrian Government, by M. Fruhmann, acting as Agent,

* Language of the case: German.

– the European Commission, by L. Haasbeek, M. Noll-Ehlers and P. Ondrůšek, acting as Agents,
having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 12(4)(a) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).
- 2 The request has been made in proceedings between Remondis GmbH and Abfallzweckverband Rhein-Mosel-Eifel (Rhine-Moselle-Eifel special-purpose association for waste, Germany) ('the association') concerning the award of a contract for the treatment of waste in the mechanical biological treatment plant of Landkreis Neuwied (Neuwied District, Germany).

Legal context

- 3 Recitals 31 and 33 of Directive 2014/24 state:

'(31) There is considerable legal uncertainty as to how far contracts concluded between entities in the public sector should be covered by public procurement rules. The relevant case-law of [the Court] is interpreted differently between Member States and even between contracting authorities. It is therefore necessary to clarify in which cases contracts concluded within the public sector are not subject to the application of public procurement rules.

Such clarification should be guided by the principles set out in the relevant case-law of [the Court]. The sole fact that both parties to an agreement are themselves public authorities does not as such rule out the application of procurement rules. However, the application of public procurement rules should not interfere with the freedom of public authorities to perform the public service tasks conferred on them by using their own resources, which includes the possibility of cooperation with other public authorities.

It should be ensured that any exempted public-public cooperation does not result in a distortion of competition in relation to private economic operators in so far as it places a private provider of services in a position of advantage vis-à-vis its competitors.

...

- (33) Contracting authorities should be able to choose to provide jointly their public services by way of cooperation without being obliged to use any particular legal form. Such cooperation might cover all types of activities related to the performance of services and responsibilities assigned to or assumed by the participating authorities, such as mandatory or voluntary tasks of local or regional authorities or services conferred upon specific bodies by public law. The services provided by the various participating authorities need not necessarily be identical; they might also be complementary.

Contracts for the joint provision of public services should not be subject to the application of the rules set out in this Directive provided that they are concluded exclusively between contracting authorities, that the implementation of that cooperation is governed solely by considerations relating to the public interest and that no private service provider is placed in a position of advantage vis-à-vis its competitors.

In order to fulfil those conditions, the cooperation should be based on a cooperative concept. Such cooperation does not require all participating authorities to assume the performance of main contractual obligations, as long as there are commitments to contribute towards the cooperative performance of the public service in question. In addition, the implementation of the cooperation, including any financial transfers between the participating contracting authorities, should be governed solely by considerations relating to the public interest.’

4 Article 2(1) of that directive provides as follows:

‘For the purposes of this Directive, the following definitions apply:

1. “contracting authorities” means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law;

...

4. “bodies governed by public law” means bodies that have all of the following characteristics:
(a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
(b) they have legal personality; and
(c) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.

...’

5 Article 12 of that directive, entitled ‘Public contracts between entities within the public sector’, provides in paragraph 4:

‘A contract concluded exclusively between two or more contracting authorities shall fall outside the scope of this Directive where all of the following conditions are fulfilled:

(a) the contract establishes or implements a cooperation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;

(b) the implementation of that cooperation is governed solely by considerations relating to the public interest; and

(c) the participating contracting authorities perform on the open market less than 20% of the activities concerned by the cooperation.’

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

- 6 The districts of Mayen-Coblenz (Germany) and Cochem-Zell (Germany) and the town of Coblenz (Germany) entrusted the performance of their tasks of disposing of the waste produced in their respective territories to the association which they control together.
- 7 However, solely the association, which is itself a contracting authority, has the ability to place residual waste into landfills, that is to say, waste which comes mainly from households and which contains no recyclable material, or almost no such material. Mixed municipal household waste must undergo complex pre-treatment in a complex mechanical biological treatment plant in order to obtain residual waste. That pre-processing makes it possible to extract recyclable materials and waste with a high calorific content, to remove harmful substances to the extent possible and to reduce significantly the biological activity of organic waste. The remainder, which is then placed into landfill, represents on average slightly less than 50% of the original volume.
- 8 Since it does not have a treatment plant of that type, the association entrusts 80% of its municipal waste disposal operations to private undertakings. The treatment of the remaining 20%, around 10 000 megagrams (Mg) per annum, is undertaken by the district of Neuwied ('the District') under an agreement concluded between the association and the District on 27 September 2018. That agreement was approved by the competent authority on 18 October 2018 and published in local and regional official journals.
- 9 That agreement provides as follows:

'Article 1

Initial position

1. The [District] is a public waste management body [Paragraph 17(1) of the Kreislaufwirtschaftsgesetz (Law on the circular economy; "the KrWG")], read in conjunction with Paragraph 3(1) of the [Landeskreislaufwirtschaftsgesetz (Law on the circular economy of the Land of Rhineland-Palatinate; "the LKrWG")]. In that capacity, it must accept and properly dispose of waste from private households, as provided for in Paragraph 2(2) of the [Gewerbeabfallverordnung (Regulation on business waste; "the GewAbfV")], or from other sources produced within its territory and supplied to it.

The [association], as a body governed by public law, is responsible, inter alia, for the treatment and disposal of residual waste from private households or other sources, in particular residual waste and business waste similar to household waste, produced within the territory of the member local authorities of the association, namely the town of Coblenz and the districts of Mayen-Koblenz and Cochem-Zell, and supplied to it.

Paragraph 3(2) of the LKrWG requires public waste management bodies to cooperate with each other in order to fulfil their tasks. The District and the association agree, in accordance with Paragraph 108(6) of the [Gesetz gegen Wettbewerbsbeschränkungen (Law prohibiting restraints of competition; "the GWB")], to cooperate in relation to the treatment of residual waste and the disposal of mixed municipal waste on the basis of this agreement, as provided for in Paragraphs 12 and 13 of the [Landesgesetz über die kommunale Zusammenarbeit (Law on cooperation between municipalities of the Land of Rhineland-Palatinate; "the KomZG")].

2. The District shall operate the Linkenbach waste treatment plant in the territory of the municipality of Linkenbach [Germany] ..., which includes a mechanical biological treatment plant (MBT) ...

3. On the basis of the provisions set out above and having regard to the proximity principle, the District and the association agree, in accordance with Paragraph 12(1) of the KomZG, that the association can use the Linkenbach MBT plant for part of the waste ... supplied to it.

Article 2

Subject matter

1. The association undertakes to treat part of the waste from households and other sources (mixed municipal waste, code 20 03 01) under the [Abfallverzeichnisverordnung (Decree relating to the list of waste; “the AVV”)] which has been supplied to it ... at the Linkenbach MBT plant.

2. The District undertakes to accept that waste in accordance with Article 3 of this agreement and to treat it in accordance with the requirements of Paragraph 6(4) of the [Deponieverordnung (Regulation on landfill sites; “the DepV”)]. The association shall remain responsible for the disposal of residual waste.

3. In accordance with the cooperation required, the association declares that it is willing to receive, up to a maximum of 3 000 Mg per year, part of the mineral waste to be treated under the disposal obligation to which the District is subject as a public authority. The quantities which the association is required to receive depend on its capacity and the details thereof have been agreed between the parties concerned, having regard to their respective interests.

Article 3

Delivery conditions

1. The association undertakes not to deliver to the Linkenbach MBT facility more than 50 Mg of the waste referred to in Article 2 per working day (Monday to Friday). The parties agree that the annual amount to be delivered by the association is 10 000 Mg; for the year 2018 the prorata amount is approximately 4 000 Mg. The District may refuse waste which does not meet the definition contained in Article 2(1), in consultation with the association.

The tonnage referred to in the second sentence [of paragraph 1] is a provisional quantity, in relation to which the quantity actually treated may be 15% higher or lower, without any effect on the fee (Article 5(1)).

...

Article 4

Operation of the Linkenbach MBT facility

1. The District shall comply with the provisions of authorisation decisions in force when operating the treatment and disposal plant at the Linkenbach MBT plant.

...

3. Treatment at the Linkenbach MBT plant produces waste which shall be placed into landfill representing 46% of inputs, which the association shall accept in accordance with the second sentence of Article 2(2).

Article 5

Fee

1. In respect of the treatment of residual waste, the association shall pay the District a fee, which shall vary according to the quantity of waste treated, by way of reimbursement of costs, not taking into account a profit margin in relation to operating costs. The details are set out in a separate fee scale.
2. If the minimum waste quantity of 8 500 Mg/year agreed in Article 3(1) is not reached, the association shall be obliged to pay compensation based on tonnage in respect of the difference between the actual quantity delivered and 8 500 Mg/year. The amount of such compensation shall then be determined by mutual agreement between the parties, having particular regard to the sincere cooperation clause set out in Article 10 of this agreement. In determining that compensation, account shall be taken in particular of the costs which the District did not have to incur and the quantities treated on behalf of third parties. The District shall in no way be obliged to seek waste to be treated in order to compensate for the shortfall in the quantity of waste. If it is impossible for the District to use the available capacity and if it cannot reduce the costs incurred by the plant, the fee agreed in Article 5(1) shall be due as compensation for the shortfall in the quantity of waste. If the maximum quantity of waste is exceeded (11 500 Mg/year), the parties shall, in accordance with the general principle described above, agree to adjust the fee in respect of the amount exceeding 11 500 Mg.

Article 6

Duration of this agreement

1. This agreement, once approved by the [competent authority], shall enter into force on the day of its publication, probably on 1 October 2018.
2. It is concluded for a period of 10 years. It may be extended twice, by mutual agreement, at least one year before the stipulated expiry date, on each occasion for a period of two years. Otherwise, it shall terminate automatically without any requirement to give notice of termination.

...

Article 8

Mutual assistance network

If the residual waste cannot be treated at the Linkenbach MBT plant because of: (i) a temporary disruption of operations, (ii) refurbishment of the facility or (iii) other events for which the District is responsible; the District has put in place a mutual assistance network with the operators of other plants. In those circumstances, it is entitled to transport the association's residual waste to plants in the mutual assistance network and to have it treated there or it shall have it disposed of according to other methods. Any additional cost shall be borne by the District.

The District shall consult the association specifically and on a case-by-case basis regarding the disposal — possibly departing from the provisions in the first and second sentences of Article 2(2) of this agreement — of residual waste in those plants. The parties shall also be free to agree to suspend reciprocal obligations under Article 7 also in circumstances covered by the first sentence of Article 8.

Article 9

Interim storage

Should a situation covered by Article 8(1) occur, the association shall, in accordance with the reciprocal nature of this agreement, as a priority over using the mutual assistance network, store, to the extent possible and at its own expense, the waste to be delivered by it, on a temporary basis on land belonging to it. Once the impediment is no longer present, the parties shall catch up with the performance of their obligations, taking due account of their respective capacities. The temporary storage obligation is subject to the caveat that authorisation under the rules on protection from emissions is granted for the association's site.

Article 10

Duty of sincere cooperation

The Parties undertake to cooperate in complete confidence and in good faith for the purpose of achieving the objectives pursued by this agreement and to keep each other informed at all times of any developments or changes which may affect the implementation of this agreement.

...'

- 10 After unsuccessfully lodging an objection against that agreement which, in its view, constituted an unlawful direct award of a public contract, Remondis, a private company active in the waste treatment sector, brought an action on 3 December 2018 before the Vergabekammer Rheinland-Pfalz (Public Procurement Board of the Land of Rhineland-Palatinate, Germany).
- 11 By decision of 6 March 2019, the Vergabekammer Rheinland-Pfalz (Public Procurement Board of the Land of Rhineland-Palatinate) declared the action inadmissible on the ground that the agreement at issue in the main proceedings constituted a form of cooperation between two contracting authorities, which fell within the scope of Paragraph 108(6) of the GWB and Article 12(4) of Directive 2014/24, and, as such, could not be the subject of an action.
- 12 That court pointed out in particular that the association had undertaken to deliver annually a quantity, fixed at 10 000 Mg, of residual waste to the District, so that the District could process the waste at the Linkenbach MBT plant. Through that mechanical and biological treatment, the District manages to have part of the waste recovered and the volume of the waste considerably reduced. The association, for its part, undertook through the agreement at issue in the main proceedings to take back the remaining material to be placed into landfill, which represents around 46% of inputs, and to take responsibility for its disposal. The reasoning of that court was that the two parties therefore entered into reciprocal obligations, establishing that there was a form of cooperation, as provided for in Paragraph 108(6) of the GWB and Article 12(4) of Directive 2014/24. Furthermore, in Article 9 of that agreement, the parties agreed that, in circumstances covered by Article 8 of that agreement, the association was to store, to the extent possible, the waste at its own cost on a site belonging to it, rather than using a mutual assistance network. The association thus, in that court's reasoning, entered into an obligation to store the waste on a temporary basis in the event of non-performance attributable to the District, which contributes to the conclusion that there was cooperation, within the meaning of those provisions.
- 13 Remondis brought an action against the decision of the Vergabekammer Rheinland-Pfalz (Public Procurement Board of the Land of Rhineland-Palatinate) before the referring court, the Oberlandesgericht Koblenz (Higher Regional Court, Koblenz, Germany). In support of that action, it submits that there is no cooperation based on a cooperative concept and that the situation at issue in the main proceedings is one entailing a public contract which must be put out to tender.

- 14 The referring court notes, as a preliminary point, that the value of the contract at issue in the main proceedings, around EUR 1 million per year, exceeds the threshold beyond which it is possible to bring an action, which is EUR 221 000. Furthermore, the agreement at issue in the main proceedings has all the characteristics of a public contract. However, if the conditions set out in Article 12(4) of Directive 2014/24 and Paragraph 108(6) of the GWB were satisfied, such a public contract would be subject neither to EU law nor to national public procurement law.
- 15 The wording of Article 12(4)(a) of Directive 2014/24 does not, however, make it possible to determine whether the agreement at issue in the main proceedings ‘establishes ... a cooperation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common’ and, accordingly, whether it falls within the scope of EU public procurement law. Furthermore, that provision has been the subject of differing interpretations by the German courts.
- 16 In that regard, the referring court considers that the acceptance by the association of mineral waste, fixed at 3 000 Mg per annum by Article 2 of the agreement at issue in the main proceedings, was purely theoretical and was intended solely to conceal the lack of cooperation. The same is true of Article 9 of that agreement, having regard to the words ‘to the extent possible’, which appear in that provision, and to the fact that, until then, the association had not attempted to obtain the necessary authorisation for temporary storage. Therefore, the content of that agreement is limited, in essence, to the obligation on the part of the District, as service provider, to pre-treat, in return for consideration, the residual waste delivered by the association in order to ensure that it is possible for that waste to be placed into landfill, which is the task of the association.
- 17 Thus, even though the parties to the agreement at issue in the main proceedings both have a general interest in disposing of waste, they nevertheless pursue different interests of their own within that context. The association has to accomplish a task which has been assigned to it by German law. Since it did not have a mechanical biological treatment plant, it sought assistance from the District, which would, in return, increase the profitability of its plant.
- 18 According to the referring court, it cannot be inferred from the above that the conditions laid down in Article 12(4)(a) of Directive 2014/24 are not satisfied since, according to recital 33 of that directive, the contracting authorities have the right ‘to provide jointly their public services by way of cooperation without being obliged to use any particular legal form’, on condition, however, that ‘cooperation ... be based on a cooperative concept’. It is not, however, required that all participating authorities assume the performance of main contractual obligations, as long as there are commitments to contribute towards the cooperative performance of the public service concerned.
- 19 Those considerations leave room for interpretation and do not make it possible to establish whether two contracting authorities, both of which are responsible for waste management, cooperate, as provided for in Article 12(4)(a) of that directive, on the basis of the sole fact that they share the performance of a specific task for the disposal of waste which is incumbent only upon one of them, or whether the association ‘cooperates in the joint performance’ of that waste disposal task by paying the District a fee so that the District can perform part of the task incumbent on it.
- 20 In that regard, the referring court states that the concept of ‘cooperation’ requires that each party’s contribution goes beyond merely implementing an obligation by which it is already bound or a purely financial ‘contribution’. Cooperation therefore presupposes that each party makes a contribution which, in the absence of a cooperation agreement, would have to be made not by itself, but by one of the other parties.

21 In those circumstances, the Oberlandesgericht Koblenz (Higher Regional Court, Coblenz) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is Article 12(4)(a) of [Directive 2014/24] to be interpreted as meaning that cooperation does indeed exist if a contracting authority responsible for waste disposal within its territory performs a disposal task — which is incumbent on it under national law and for the performance of which several operations are required — not entirely by itself, but rather commissions another contracting authority that is independent of it and is likewise responsible for waste disposal within its territory to carry out one of the necessary operations in return for consideration?’

Consideration of the question referred

22 By its question, the referring court asks, in essence, whether Article 12(4)(a) of Directive 2014/24 must be interpreted as meaning that cooperation between contracting authorities cannot be said to exist where a contracting authority which is responsible for a task in the public interest within its territory does not itself perform the entirety of that task — which is incumbent on it alone under national law and for the performance of which a number of operations are required — but rather commissions another contracting authority that is independent of it and is likewise responsible for that public interest task within its own territory to carry out one of the operations required in return for consideration.

23 It should be noted at the outset that the concept of ‘cooperation’ in Article 12(4) of Directive 2014/24 is not defined by that directive.

24 In accordance with settled case-law, it follows from the need for a uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union; that interpretation must take into account, not only its terms, but also its context and the objective pursued by the relevant legislation (see, to that effect, judgments of 17 November 1983, *Merck*, 292/82, EU:C:1983:335, paragraph 12; of 18 January 1984, *Ekro*, 327/82, EU:C:1984:11, paragraph 11; of 19 September 2000, *Linster*, C-287/98, EU:C:2000:468, paragraph 43; and of 21 March 2019, *Falck Rettungsdienste and Falck*, C-465/17, EU:C:2019:234, paragraph 28).

25 It is apparent from Article 12(4)(a) of Directive 2014/24 that a contract concluded exclusively between two or more contracting authorities falls outside the scope of that directive where it establishes or implements cooperation between the participating contracting authorities with the aim of ensuring that the public services they have to perform are provided with a view to achieving objectives they have in common.

26 The very wording of that provision thus places the concept of ‘cooperation’ at the very heart of the exclusion laid down in that provision.

27 It is of little importance, in that regard, that the final text of Article 12(4) of Directive 2014/24 no longer refers, in contrast to Article 11(4) of the Proposal for a Directive of the European Parliament and of the Council on public procurement of 20 December 2011 (COM (2011)896 final), to the requirement of ‘genuine cooperation between the participating contracting authorities’.

28 Indeed, unless the view is to be taken that the intention of the EU legislature was to establish a mechanism based on cooperation which was not genuine or was to undermine the effectiveness of horizontal cooperation between contracting authorities, the requirement of ‘genuine cooperation’ is apparent from the clear statement in the third paragraph of recital 33 of Directive 2014/24 that

cooperation must be 'based on a cooperative concept'. Such wording, which is ostensibly a tautology, must be interpreted as referring to the requirement that the cooperation thus established or implemented be effective.

- 29 It follows that the joint participation of all the parties to the cooperation agreement is essential to ensure that the public services they have to perform are provided and that that condition cannot be deemed to be satisfied where the sole contribution of certain contracting parties goes no further than a simple reimbursement of costs, such as those referred to in Article 5 of the agreement at issue in the main proceedings.
- 30 Moreover, if such reimbursement of costs were in itself sufficient to constitute 'cooperation' within the meaning of Article 12(4) of Directive 2014/24, no distinction could be drawn between such a form of 'cooperation' and a 'public contract' which is not covered by the exclusion laid down in that provision.
- 31 That interpretation of the concept of 'cooperation', within the meaning of Article 12(4) of that directive, is, indeed, supported by the second paragraph of recital 31 of the directive, which states that the sole fact that both parties to an agreement are themselves public authorities does not as such rule out the application of public procurement rules.
- 32 Furthermore, the conclusion of a cooperation agreement between parties in the public sector must be discernible as the culmination of a process of cooperation between the parties to the agreement (see, to that effect, judgment of 9 June 2009, *Commission v Germany*, C-480/06, EU:C:2009:357, paragraph 38). The development of cooperation between entities belonging to the public sector has an inherently collaborative dimension, which is not present in a public procurement procedure falling within the scope of the rules laid down by Directive 2014/24.
- 33 Accordingly, drawing up a cooperation agreement presupposes that the public sector entities which intend to conclude such an agreement establish jointly their needs and the solutions to be adopted. By contrast, that stage of assessing and establishing needs is, as a general rule, unilateral in the case of the award of a normal public contract. In the latter case, the contracting authority does no more than launch a call for tenders setting out the specifications which it has itself drawn up.
- 34 It follows that the existence of cooperation between entities belonging to the public sector is based on a strategy which is common to the partners to that cooperation and requires the contracting authorities to combine their efforts to provide public services.
- 35 In the present case, it is apparent from the order for reference that the agreement concluded between the association and the District does not disclose any form of cooperation between the contracting parties. Indeed, the referring court observed, in essence, that only Article 2(3) of the agreement at issue in the main proceedings is likely to foster cooperation between the contracting parties. However, after the contracting parties submitted that that clause constituted a statement of intention, the association expressly recognised, in the proceedings before the Vergabekammer Rheinland-Pfalz (Public Procurement Board of the Land of Rhineland-Palatinate), that that clause was nugatory.
- 36 Furthermore, it does not appear from the documents before the Court that the conclusion of the agreement at issue in the main proceedings is the culmination of a process of cooperation between the association and the District, which it is nevertheless for the referring court to establish.
- 37 Finally, neither the fact that, under Article 2(2) and Article 4(3) of the agreement at issue in the main proceedings, the association must accept the residual waste for the purpose of placing it into landfill, such waste accounting for 46% of inputs, nor the fact that, under Article 5(1) of that agreement, the District's remuneration takes the form solely of a reimbursement of costs without any account being taken of a profit margin for operating costs, is sufficient to establish that a genuine form of cooperation exists between the association and the District.

- 38 Therefore, the sole purpose of the agreement at issue in the main proceedings appears to be that of acquiring a service in return for payment of a fee. In those circumstances, and subject to verification by the referring court, the public contract at issue in the main proceedings is not covered by the exclusion laid down in Article 12(4) of Directive 2014/24.
- 39 In the light of all the foregoing, the answer to the question referred is that Article 12(4)(a) of Directive 2014/24 must be interpreted as meaning that cooperation between contracting authorities cannot be said to exist where a contracting authority which is responsible for a task in the public interest within its territory does not itself perform the entirety of that task — which is incumbent on it alone under national law and for the performance of which a number of operations are required — but rather commissions another contracting authority that is independent of it and is likewise responsible for that public interest task within its own territory to carry out one of the operations required in return for consideration.

Costs

- 40 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 (Ninth Chamber) hereby rules:

Article 12(4)(a) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC must be interpreted as meaning that cooperation between contracting authorities cannot be said to exist where a contracting authority which is responsible for a task in the public interest within its territory does not itself perform the entirety of that task — which is incumbent on it alone under national law and for the performance of which a number of operations are required — but rather commissions another contracting authority that is independent of it and is likewise responsible for that public interest task within its own territory to carry out one of the operations required in return for consideration.

[Signatures]