



Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

22 October 2015*

(Reference for a preliminary ruling — Public procurement — Directive 2004/18/EC — Grounds for exclusion from participation in a tendering procedure — Contract falling below the threshold of application of that directive — Fundamental rules of the FEU Treaty — Declaration of acceptance of a legality protocol on combating criminal activity — Exclusion for failure to lodge such a declaration — Whether permissible — Proportionality)

In Case C-425/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Giustizia amministrativa per la Regione Siciliana (Council of Administrative Justice for the Region of Sicily, Italy), made by decision of 9 July 2014, received at the Court on 17 September 2014, in the proceedings

Impresa Edilux Srl, as the representative of a temporary joint venture,

Società Italiana Costruzioni e Forniture Srl (SICEF)

v

Assessorato Beni Culturali e Identità Siciliana — Servizio Soprintendenza Provincia di Trapani,

Assessorato ai Beni Culturali e dell'Identità Siciliana,

UREGA — Sezione provinciale di Trapani,

Assessorato delle Infrastrutture e della Mobilità della Regione Siciliana,

other party to the main proceedings:

Icogen Srl,

THE COURT (Tenth Chamber),

composed of D. Šváby, President of the Eighth Chamber, acting as President of the Tenth Chamber, E. Juhász and C. Vajda (Rapporteur), Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Italian.

after considering the observations submitted on behalf of:

- Impresa Edilux Srl, as the representative of a temporary joint venture, and Società Italiana Costruzioni e Forniture Srl (SICEF), by F. Lattanzi and S. Iacuzzo, avvocati,
- Icogen Srl, by C. Giurdanella, avvocato,
- the Italian Government, by G. Palmieri, acting as Agent, and by S. Varone, avvocato dello Stato,
- the European Commission, by D. Recchia and A. Tokár, 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 45 of 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), as amended by Commission Regulation (EU) No 1251/2011 of 30 November 2011 (OJ 2011 L 319, p. 43) ('Directive 2004/18').
- 2 The request has been made in proceedings between, on the one hand, Impresa Edilux Srl ('Edilux'), as the representative of a temporary joint venture formed between itself and Società Italiana Costruzioni e Forniture Srl ('SICEF'), and, on the other, the Assessorato Beni Culturali e Identità Siciliana — Servizio Soprintendenza Provincia di Trapani (Directorate of Cultural Heritage and Sicilian Identity, Committee for the Province of Trapani), the Assessorato ai Beni Culturali e dell'Identità Siciliana (Directorate of Cultural Heritage and Sicilian Identity), the UREGA — Sezione provinciale di Trapani (UREGA, Section for the Province of Trapani) and the Assessorato delle Infrastrutture e della Mobilità della Regione Siciliana (Directorate of Infrastructure and Mobility of the Region of Sicily) (collectively, 'the contracting authorities at issue in the main proceedings') concerning the exclusion, by the latter, of the participation of Edilux and SICEF in a public procurement procedure for not having lodged, with their tender, a declaration of acceptance of the clauses included in a legality protocol.

Legal context

EU law

- 3 Article 2 of Directive 2004/18 provides:

'Contracting authorities shall treat economic operators equally and non-discriminatorily and shall act in a transparent way.'
- 4 According to Article 7(c) of that directive, the latter is to apply to public works contracts which have a value exclusive of value added tax estimated to be equal to or greater than EUR 5 000 000.

5 Article 45 of that directive, entitled 'Personal situation of the candidate or tenderer', provides in paragraphs 1 and 2:

'1. Any candidate or tenderer who has been the subject of a conviction by final judgment of which the contracting authority is aware for one or more of the reasons listed below shall be excluded from participation in a public contract:

- (a) participation in a criminal organisation ...
- (b) corruption, ...
- (c) fraud ...
- (d) money laundering ...

Member States shall specify, in accordance with their national law and having regard for Community law, the implementing conditions for this paragraph.

They may provide for a derogation from the requirement referred to in the first subparagraph for overriding requirements in the general interest.

...

2. Any economic operator may be excluded from participation in a contract where that economic operator:

- (a) is bankrupt or is being wound up, where his affairs are being administered by the court, where he has entered into an arrangement with creditors, where he has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;
- (b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by a court or of an arrangement with creditors or of any other similar proceedings under national laws and regulations;
- (c) has been convicted by a judgment which has the force of res judicata in accordance with the legal provisions of the country of any offence concerning his professional conduct;
- (d) has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate;
- (e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;
- (f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;
- (g) is guilty of serious misrepresentation in supplying the information required under this section, or has not supplied such information.

Member States shall specify, in accordance with their national law and having regard for Community law, the implementing conditions for this paragraph.'

Italian law

- 6 Article 46(1a) of Legislative Decree No 163 establishing the Code on public works contracts, public service contracts and public supply contracts pursuant to Directives 2004/17/EC and 2004/18/EC (decreto legislativo n. 163 — Codice dei contratti pubblici relativi a lavori, servizi e forniture in attuazione delle direttive 2004/17/CE e 2004/18/CE) of 12 April 2006 (Ordinary Supplement to GURI No 100 of 2 May 2006), provides:

‘The contracting authority shall exclude candidates or competitors in the event of failure to comply with the requirements of this Code, the regulations and other legal provisions in force, as well as in situations where there is fundamental uncertainty regarding the content or the source of the tender owing to the absence of signatures or other essential elements, or in the event that the files containing the tender or the application to participate are incomplete, or where there are other irregularities relating to the seals on those files which are such as to warrant a finding, based on the specific circumstances involved, that the principle of secrecy of tenders has been infringed; neither invitations to tender nor letters of invitation may contain additional requirements to be complied with on pain of exclusion. Such requirements shall be void in any event.’

- 7 Under Article 1(17) of Law No 190 on measures for the prevention and suppression of corruption and illegal conduct in the public administration (legge n. 190, disposizioni per la prevenzione e la repressione della corruzione e dell’illegalità nella pubblica amministrazione) of 6 November 2012 (GURI No 265 of 13 November 2012, ‘Law No 190/2012’):

‘Contracting authorities may state in public procurement notices, invitations to tender or letters of invitation that failure to comply with the clauses of legality protocols or integrity agreements is to constitute a ground for exclusion from the tendering procedure.’

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

- 8 Edilux and SICEF are the lead company and representative and the principal of a temporary joint venture, respectively. On 20 May 2013, the contracting authority in question in the main proceedings awarded them a public works contract with an estimated value of EUR 2 271 735 concerning the restoration of Greek temples in Sicily.
- 9 Following a complaint made by Icogen Srl, a company placed second at the end of the tendering procedure, the contracting authority in question in the main proceedings on 18 June 2013 annulled the decision awarding the contract in question to Edilux and SICEF and definitively awarded that contract to Icogen Srl.
- 10 The contracting authority at issue in the main proceedings based that annulment, and therefore, the exclusion of Edilux and SICEF from the tendering procedure, on the failure to lodge, with their tender, the declaration of acceptance of the clauses included in the legality protocol which had to be produced according to the scheme established in Annex 6 to the tendering specifications for that tender. Under the heading ‘Notice’ of those specifications, it was laid down that that declaration was an essential document, to be produced by candidates on pain of exclusion from the tendering procedure.

- 11 That declaration, a copy of which is included in the documents submitted to the Court, states as follows:

‘[The participant in the tender] expressly undertakes, in the event of being awarded a contract:

- (a) to inform ... the contracting authority ... of the state of completion of the works, of the purpose, amount and recipients of subcontracts and derived contracts, ... and of the methods of selecting contractors ...;
- (b) to inform the contracting authority of any attempted disturbance, irregularity or distortion observed during the tendering procedure and/or execution of the contract by any interested person, any agent or any person capable of influencing the decisions relating to any possible award of the contract;
- (c) to cooperate with the police, by reporting any attempt at extortion, intimidation or influence of a criminal nature;
- (d) to include the same clauses in subcontracts ... and is aware of the fact that, otherwise, any authorisations will not be granted;

expressly and solemnly declares

- (e) that it is not in a relationship of control or association (legal and/or factual) with other competitors and that it has not concluded and will not conclude any agreement with other participants in the tendering procedure;
- (f) that it will not subcontract any type of tasks to other companies participating in the tender [...] and is aware of the fact that, otherwise, those subcontracts will not be authorised;
- (g) that the tender is consistent with the principles of seriousness, integrity, independence and confidentiality, and that it undertakes to observe the principles of fairness, transparency and integrity; and that the tenderer has not concluded and will not conclude any agreement to restrict or prevent competition with other participants in the tendering procedure;
- (h) that, if awarded the contract, it undertakes to communicate to the contracting authority any attempted disturbance, irregularity or distortion observed during the tendering procedure and/or execution of the contract by any interested person, any agent or any person capable of influencing the decisions relating to any possible award of the contract;
- (i) undertakes to cooperate with the police, by reporting any attempt at extortion, intimidation or influence of a criminal nature ...;
- (j) that it shall include the same clauses in subcontracts ... and is aware of the fact that, otherwise, any authorisations will not be granted;
- (k) ... declares that it is aware that the declarations and the obligations mentioned above are prerequisites for participating in the tender, so that if the contracting authority establishes, during the tendering procedure and on the basis of serious, precise and consistent evidence, the existence of a de facto association, the undertaking shall be excluded.’

- 12 The Tribunale amministrativo regionale per la Sicilia (Regional Administrative Court for Sicily) having dismissed the action brought by Edilux and SICEF against the decision of the contracting authority in question in the main proceedings of 18 June 2013, they brought an appeal before the Consiglio di Giustizia amministrativa per la Regione Siciliana (Council of Administrative Justice for the Region of Sicily).
- 13 The referring court explains that the purpose of introducing legality protocols into Italian law is to prevent and combat the pernicious phenomenon of the infiltration of organised crime, firmly entrenched in some regions of southern Italy, into the public procurement sector. The referring court takes the view that those protocols are also essential in order to protect the fundamental principles of competition and transparency underlying Italian and EU public procurement legislation.
- 14 According to that court, Article 1(17) of Law No 190/2012 means that a contracting authority may require, on pain of exclusion, the prior acceptance of such protocols, which is necessary in order for the terms of those protocols to be binding. In fact, if it were only failure to comply with those clauses during the stage of the performance of the contract that could be penalised, the desired and declared effect of providing for a maximum level of protection and deterrence would be reduced to nothing. In addition, such a ground for exclusion is, in its view, lawful under Article 46(1a) of Legislative Decree No 163, which provides for exclusion from a tendering procedure on the basis of the statutory provisions in force, including Law No 190/2012.
- 15 However, the referring court harbours doubts as to the compatibility of such a ground for exclusion with EU law. In that regard, the referring court notes that Article 45 of Directive 2004/18, which provides, in the first sentence of paragraph 1, and in the first sentence of paragraph 2, an exhaustive list of the grounds for exclusion, does not contain a similar provision. It considers, however, that Article 1(17) of Law No 190/2012 could be consistent with the third sentence of Article 45(1) of that directive, which, in its view, provides a derogation from the exhaustive nature of the grounds for exclusion for overriding requirements in the general interest, such as those relating to public order and the prevention of crime.
- 16 The referring court adds that, even if the value of the public works contract in dispute is below the relevant threshold for Directive 2004/18 to apply, the principles of EU law are still applicable. In that regard, it notes that that contract has certain cross-border interest since the provisions of the legislation specific to the procedure relating to that contract concern the participation of undertakings other than those established in Italy.
- 17 It was in those circumstances that the Consiglio di Giustizia amministrativa per la Regione Siciliana (Council of Administrative Justice for the Region of Sicily) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Does EU law, and in particular Article 45 of Directive 2004/18, preclude a provision — such as Article 1(17) of Law No 190/2012 — under which contracting authorities may treat as a legitimate ground for excluding undertakings from a tendering procedure for the award of a public procurement contract the non-acceptance, or the lack of documentary evidence of acceptance, by those undertakings of the commitments set out in legality protocols and, more generally, in agreements between the contracting authorities and participating undertakings, intended to prevent organised crime from infiltrating the public procurement sector?
- (2) On a proper construction of Article 45 of Directive 2004/18, may legislation of a Member State conferring the power of exclusion described in Question 1 be regarded as a derogation from the principle that the grounds for exclusion are exhaustive which is justified by the overriding necessity of combating the attempted infiltration of organised crime into procedures for the award of public contracts?’

Consideration of the questions referred

Preliminary observations

- 18 The questions referred for a preliminary ruling by the national court seek an interpretation of Article 45 of Directive 2004/18. However, the referring court states, in its request for a preliminary ruling, that the value of the public works contract at issue in the main proceedings falls below the relevant threshold for the application of that directive, namely, that fixed in Article 7(c) thereof.
- 19 It must be borne in mind that the strict special procedures prescribed by the EU directives on the coordination of procedures for the award of public contracts apply only to contracts whose value exceeds a threshold expressly laid down in each of those directives. Accordingly, the rules in those directives do not apply to contracts with a value below the threshold set by those directives (see judgment in *Enterprise Focused Solutions*, C-278/14, EU:C:2015:228, paragraph 15 and the case-law cited). Therefore, Article 45 of Directive 2004/18 does not apply in the context of the dispute in the main proceedings.
- 20 Nevertheless, it is clear from the settled case-law of the Court that the fact that the referring court's question refers only to certain provisions of EU law does not mean that the Court may not provide the national court with all the guidance on points of interpretation that may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to those points in its question. It is, in this regard, for the Court to extract from all the information provided by the referring court, in particular from the grounds of the decision to make the reference, the points of EU law which require interpretation in view of the subject-matter of the dispute (see, inter alia, judgment in *Ville d'Ottignies-Louvain-la-Neuve and Others*, C-225/13, EU:C:2014:245, paragraph 30 and the case-law cited).
- 21 In accordance with equally well-established case-law, the award of contracts which, in view of their value, do not fall within the scope of the EU directives on the coordination of procedures for the award of public contracts is none the less subject to the fundamental rules and the general principles of the FEU Treaty, in particular the principles of equal treatment and of non-discrimination on grounds of nationality and the consequent obligation of transparency, provided that those contracts have certain cross-border interest in the light of certain objective criteria (see, to that effect, judgment in *Enterprise Focused Solutions*, C-278/14, EU:C:2015:228, paragraph 16 and case-law cited).
- 22 In that regard, the national court accepts the application to the dispute before it of the principles of EU law and notes, in that context, the existence of certain cross-border interest, given that the provisions of the legislation specific to the procedure relating to the contract which forms the subject-matter of that dispute concern the participation of undertakings other than those established in Italy.
- 23 In those circumstances, it is appropriate to consider that the first question concerns the interpretation of the fundamental rules and general principles of the Treaty referred to in paragraph 21 of the present judgment.
- 24 In contrast, there is no need to answer the second question. As is clear from the grounds of the order for reference, that question specifically concerns the third sentence of Article 45(1) of Directive 2004/18, which provides for a derogation, for overriding requirements in the general interest, from the obligation, referred to in the first sentence of that paragraph, for a contracting authority to exclude from participation in a public contract any candidate or tenderer who has been the subject of a conviction by final judgment for one or more reasons listed in that provision.

The first question

- 25 The first question must therefore be understood as relating, in essence, to whether the fundamental rules and general principles of the Treaty, in particular the principles of equal treatment and of non-discrimination and the consequent obligation of transparency, must be interpreted as precluding a provision of national law under which a contracting authority may provide that a candidate or tenderer be excluded from a tendering procedure relating to a public procurement contract for not having lodged, with its tender, a written acceptance of the commitments and declarations contained in a legality protocol, such as that at issue in the main proceedings, the purpose of which is to prevent organised crime infiltrating the public procurement sector.
- 26 The Court has already held that, as regards the principles of equal treatment and transparency, the Member States must be recognised to have a certain discretion for the purpose of adopting measures intended to ensure observance of those principles, which are binding on contracting authorities in any procedure for the award of a public contract. Each Member State is best placed to identify, in the light of historical, legal, economic or social considerations specific to it, situations propitious to conduct liable to bring about breaches of those principles (see, to that effect, judgment in *Serrantoni and Consorzio stabile edili*, C-376/08, EU:C:2009:808, paragraphs 31 and 32 and the case-law cited).
- 27 According to the referring court, a legality protocol such as that at issue in the case in the main proceedings is intended to prevent and combat the phenomenon of organised crime, firmly entrenched in some regions of southern Italy, from infiltrating, in particular, the public procurement sector. It also serves to protect the principles of competition and transparency underlying Italian and EU public procurement legislation.
- 28 It is clear that, by preventing criminal activity and distortions of competition in the public contracts sector, a measure such as the obligation to declare acceptance of that type of legality protocol appears to be such as to strengthen equal treatment and transparency in procurement procedures. In addition, inasmuch as that obligation is incumbent upon every candidate or tenderer without distinction, it does not conflict with the principle of non-discrimination.
- 29 However, in accordance with the principle of proportionality, which constitutes a general principle of EU law, such a measure must not go beyond what is necessary to achieve the intended objective (see, to that effect, judgment in *Serrantoni and Consorzio stabile edili*, C-376/08, EU:C:2009:808, paragraph 33 and the case-law cited).
- 30 In that regard, it is appropriate, in the first place, to reject Edilux and SICEF's argument that a declaration of acceptance of certain commitments is an ineffective means of combatting the infiltration of organised crime since observance of those commitments can be determined only after the contract concerned has been awarded.
- 31 The referring court states that, in order to be binding, the terms of legality protocols must first be accepted as a condition for admission to the tendering procedure and that, if it were only failure to comply with those clauses during the stage of performance that could be penalised, the anticipated highest level of protection and deterrence would be reduced to nothing. In those circumstances, account being taken of the Member States' discretion referred to in paragraph 26 of the present judgment, it cannot be considered that the obligation to declare acceptance of the commitments contained in a legality protocol from the start of participation in a tendering procedure for the award of a contract goes beyond what is necessary to achieve the desired objectives.
- 32 In the second place, as regards the content of the legality protocol at issue in the main proceedings, the commitments which must be given by candidates or tenderers under subparagraphs a) to d) of the legality protocol are, in essence, to indicate the progress of the works, the purpose, amount and recipients of subcontracts and derived contracts and the procedures for selecting contractors; to

report any attempted interference, irregularity or distortion in the conduct of the tendering procedure and during performance of the contract, to cooperate with the police, by reporting any attempt at extortion, intimidation or influence of a criminal nature, and to include the same clauses in subcontracts. Those commitments overlap with the declarations contained in that protocol, under subparagraphs (h) to (j).

- 33 As regards a declaration such as that in subparagraph (g) of the legality protocol at issue in the main proceedings, whereby the participant declares that it has not concluded and will not conclude any agreement with other participants in the tendering procedure seeking to restrict or avoid competition, it is limited to the purpose of protecting the principles of competition and transparency in public procurement procedures.
- 34 Such commitments and declarations concern the honest conduct of the candidate or tenderer towards the contracting authority at issue in the main proceedings and cooperation with law enforcement. They do not, therefore, go beyond what is necessary in order to prevent organised crime infiltrating the public contract awards sector.
- 35 However, subparagraph (e) of the legality protocol at issue in the main proceedings includes a declaration that the participant is not in a relationship of control or of association with other competitors.
- 36 As the European Commission has observed in its written observations, it follows from the case-law of the Court that the automatic exclusion of candidates or tenderers who are in such a relationship with other candidates or tenderers goes beyond what is necessary to prevent collusive behaviour and, therefore, to ensure the application of the principle of equal treatment and observance of the obligation of transparency. Such an automatic exclusion constitutes an irrebuttable presumption of mutual interference in the respective tenders, for the same contract, of undertakings linked by a relationship of control or of association. Accordingly, it precludes the possibility for those candidates or tenderers of showing that their tenders are independent and is therefore contrary to the EU interest in ensuring the widest possible participation by tenderers in a call for tenders (see, to that effect, judgments in *Assitur*, C-538/07, EU:C:2009:317, paragraphs 28 to 30, and *Serrantoni and Consorzio stabile edili*, C-376/08, EU:C:2009:808, paragraphs 39 and 40).
- 37 Subparagraph (e) of the legality protocol also includes a declaration that the participant has not concluded and will not conclude any agreement with other participants in the tendering procedure. By excluding in this way any agreements between the participants, including agreements not capable of restricting competition, such a declaration goes beyond what is necessary to safeguard the principle of competition in the public procurement sector. Therefore, such a declaration differs from that in subparagraph (g) of the legality protocol at issue in the main proceedings.
- 38 It follows that an obligation for a participant in a tendering procedure to declare, on the one hand, that it is not in a relationship of control or of association with other competitors and, on the other, that it has not concluded any agreement with other participants in the tendering procedure, with the consequence that, failing such a declaration, that participant is automatically excluded from that procedure, infringes the principle of proportionality.
- 39 Similar considerations must also apply as regards the declaration in paragraph (f) of the legality protocol at issue in the main proceedings, by which the participant declares that it will not subcontract any type of tasks to other undertakings participating in the tendering procedure and is aware of the fact that, otherwise, those subcontracts will not be authorised. In fact, such a declaration involves an irrebuttable presumption that any subcontract by the successful tenderer, after the contract has been awarded, to another participant in the same call for tenders resulted from collusion between the two undertakings concerned, without giving them the opportunity to show that is not the case. Thus, such a declaration goes beyond what is necessary to prevent collusive behaviour.

- 40 Furthermore, given the objective of preventing and combating the phenomenon of the infiltration of organised crime, any possible influence exerted on the successful tenderer by another undertaking participating in the tender with a view to having the performance of that contract subcontracted to the latter would have to be communicated to the contracting authority or, if necessary, reported to the police, in accordance with subparagraphs (b), (c), (g), (h) and (i) of the legality protocol at issue in the main proceedings.
- 41 In the light of the foregoing, the answer to the first question is that the fundamental rules and general principles of the Treaty, in particular the principles of equal treatment and of non-discrimination and the consequent obligation of transparency, must be interpreted as not precluding a provision of national law under which a contracting authority may provide that a candidate or tenderer be automatically excluded from a tendering procedure relating to a public contract for not having lodged, with its tender, a written acceptance of the commitments and declarations contained in a legality protocol, such as that at issue in the main proceedings, the purpose of which is to prevent organised crime from infiltrating the public procurement sector. However, inasmuch as that protocol contains declarations that the candidate or tenderer is not in a relationship of control or of association with other candidates or tenderers, has not concluded and will not conclude any agreement with other participants in the tendering procedure and will not subcontract any type of tasks to other undertakings participating in that procedure, the lack of such declarations is not to lead to the automatic exclusion of the candidate or tenderer from that procedure.

Costs

- 42 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 (Tenth Chamber) hereby rules:

The fundamental rules and general principles of the FEU Treaty, in particular the principles of equal treatment and of non-discrimination and the consequent obligation of transparency, must be interpreted as not precluding a provision of national law under which a contracting authority may provide that a candidate or tenderer be automatically excluded from a tendering procedure relating to a public contract for not having lodged, with its tender, a written acceptance of the commitments and declarations contained in a legality protocol, such as that at issue in the main proceedings, the purpose of which is to prevent organised crime from infiltrating the public procurement sector. However, inasmuch as that protocol contains declarations that the candidate or tenderer is not in a relationship of control or of association with other candidates or tenderers, has not concluded and will not conclude any agreement with other participants in the tendering procedure and will not subcontract any type of tasks to other undertakings participating in that procedure, the lack of such declarations is not to lead to the automatic exclusion of the candidate or tenderer from that procedure.

[Signatures]