Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

11 December 2014*

(Reference for a preliminary ruling — Ambulance services — National legislation reserving ambulance services for public health establishments to registered voluntary associations fulfilling the legal requirements on a preferential basis — Compatibility with EU law — Public procurement — Articles 49 TFEU and 56 TFEU — Directive 2004/18/EC — Mixed services, covered both by Annex II A and Annex II B to Directive 2004/18 — Article 1(2)(a) and (d) — Concept of 'public service contracts' — Pecuniary nature — Consideration consisting in the reimbursement of expenses incurred)

In Case C-113/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Italy), made by decision of 25 January 2013, received at the Court on 8 March 2013, in the proceedings

Azienda sanitaria locale n. 5 'Spezzino',

Associazione nazionale pubblica assistenza (ANPAS) — Comitato regionale Liguria,

Regione Liguria

v

San Lorenzo Soc. coop. sociale,

Croce Verde Cogema cooperativa sociale Onlus,

intervening parties:

Croce Rossa Italiana — Comitato regionale Liguria and Others,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Vajda, A. Rosas, E. Juhász and D. Šváby (Rapporteur), Judges,

Advocate General: N. Wahl,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 26 February 2014,

* Language of the case: Italian.

after considering the observations submitted on behalf of:

— the Associazione nazionale pubblica assistenza (ANPAS) — Comitato regionale Liguria, by R. Damonte, avvocato,

— Regione Liguria, by B. Baroli, avvocatessa,

— San Lorenzo Soc. coop. sociale and Croce Verde Cogema cooperativa sociale Onlus, by S. Betti, avvocato,

— the Italian Government, by G. Palmieri, acting as Agent, and C. Colelli, avvocato dello Stato,

— the European Commission, by L. Pignataro, A. Tokár and A. Aresu, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 April 2014,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 49 TFEU, 56 TFEU, 105 TFEU and 106 TFEU.

2 The request has been made in appeal proceedings between the Azienda sanitaria locale No. 5 'Spezzino' ('the ASL No. 5') the local administrative authority responsible for the management of health services, the Associazione nazionale pubblica assistenza (ANPAS) — Comitato regionale Liguria (National Association of Public Assistance Groups — Regional Committee, Liguria) and Regione Liguria on the one hand, and San Lorenzo Soc. coop. sociale and Croce Verde Cogema cooperative sociale Onlus, on the other hand, cooperative companies active in the ambulance service sector, concerning various decisions relating to the organisation at regional and local level of urgent and emergency ambulance services.

Legal context

EU law

3 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 corrigendum OJ 2004 L 351, p. 44), as amended by Commission Regulation (EC) No 1177/2009 of 30 November 2009 (OJ 2009 L 314, p. 64), contains the following definitions in Article 1(2) and (5):

'2.

(a) "Public contracts" are contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services within the meaning of this Directive.

…

(d) "Public service contracts" are public contracts other than public works or supply contracts having as their object the provision of services referred to in Annex II.

…

5. A "framework agreement" is an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.'

4 The applicability of Directive 2004/18 to the award of public service contracts is subject to various conditions, in particular as regards the value of those contracts and the kind of services concerned.

5 Thus, first, in accordance with the first and third indents of Article 7(b), Directive 2004/18 applies, inter alia, to public service contracts with a value of EUR 193 000 or more (before value added tax) which have as their object the services listed in Annex II A to that directive awarded by contracting authorities other than those listed in Annex IV or which have as their object the services listed in Annex II B thereto. Under Article 9(9) of that directive, the value to be taken into consideration in respect of framework agreements is the maximum estimated value of all the contracts envisaged for the total term of the framework agreement concerned. However, according to Article 9(8)(b)(ii) thereof, in the case of contracts without a fixed term or with a term greater than 48 months the value to be taken into consideration is limited to monthly value of such a contract multiplied by 48.

6 Second, under Articles 20 and 21 of Directive 2004/18, contracts which have as their object services listed in Annex II A are to be awarded in accordance with Articles 23 to 55 and those which have as their object services listed in Annex II B are to be subject solely to Articles 23 and 35(4) thereof. In accordance with Article 22 of Directive 2004/18, contracts which have as their object services listed both in Annex II A and in Annex II B are to be awarded in accordance with Articles 23 to 55 thereof where the value of the services listed in Annex II A is greater than the value of the services listed in Annex II B. In other cases, contracts are to be awarded in accordance with Articles 23 and 35(4) of that directive.

7 Category 2 in Annex II A to Directive 2004/18 concerns land transport services, including armoured car services, and courier services, except transport of mail. Category 25 in Annex II B to that directive covers health and social services.

8 In accordance with Article 10(h) 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 (OJ 2014 L 94, p. 65), Directive 2014/24 is not applicable, inter alia, to public service contracts which have as their object emergency ambulance services. It follows from recital 28 in the preamble to that directive that, by setting out that exclusion, the EU legislature intended to take account of the specific nature of non-profit organisations or associations. However, Directive 2014/24 is not applicable in the case in the main proceedings, because it is clear from Article 91 thereof that Directive 2004/18 is to remain in force until 18 April 2016, the date on which it will be repealed.

Italian law

9 The order for reference states that the Italian Republic has incorporated into its constitution the principle of voluntary action by its citizens. Thus, the last paragraph of Article 118 thereof provides that citizens, acting individually or in an association, may participate in activities of public interest with the support of the public authorities, on the basis of the principle of subsidiarity.

10 Such participation is given effect, as regards the health services, by Law No 833 on the establishment of the national health service (legge n. 833 — Istituzione del servizio sanitario nazionale) of 23 December 1978 (Ordinary supplement to GURI No 360 of 28 December 1978). Article 45 of that law recognises the role of voluntary organisations and benevolent institutions whose object it is to contribute to the attaining of the institutional objectives of the national health service. It provides that that contribution is to take the form of agreements concluded in accordance with planning and legislation laid down at regional level.

11 The voluntary nature of such participation is regulated at national level by Law No 266 setting out a framework on voluntary work (legge n. 266 — Legge-quadro sul volontariato) of 11 August 1991 (GURI No 196, of 22 August 1991, 'Law No 266/1991'). Article 1 thereof sets out the principle of voluntary work in the following terms:

'The Italian Republic recognises the social value and function of voluntary work as an expression of solidarity and pluralism, fosters its development while preserving its independence and encourages individual contributions in the pursuit of social, civil and cultural objectives set by the State, the Regions, the Autonomous Provinces of Trentino and Bolzano and the local authorities.'

12 Article 2 of that law defines voluntary work as any activity 'provided in person, voluntarily and without charge through the organisation to which the volunteer belongs on a non-profit-making basis, even indirectly, and exclusively for the good of the community'. The non-profit-making nature of such participation is expressed by the prohibition of compensating the volunteer in any way, except for expenses actually incurred by him for the activity carried out, for which he may be reimbursed within the limits fixed by that law. That article provides that the status of volunteer is incompatible with that of an employed or self-employed worker, and with any relationship involving remuneration paid to the volunteer by the organisation to which he belongs.

13 In accordance with Article 3 of that law, a voluntary organisation is any organisation set up with the aim of undertaking voluntary activities having overall and primary recourse to the individual, voluntary and unpaid services of its members, the same article authorising such an organisation to use employed or self-employed workers only to the extent necessary for its day-to-day functioning or having regard to the type or specialisation of the activity.

14 Article 5 of Law No 266/1991 provides that voluntary organisations may derive their resources only from members' subscriptions, contributions from individuals or institutions or from donations and bequests, payments made on the basis of agreements and income received from incidental commercial or production activities. The latter are the subject of a decree from the Finance Ministry and the Ministry for the Family and Social Solidarity on the criteria for the identification of incidental commercial and production activities carried out by voluntary organisations (Criteri per l'individuazione delle attività commerciali e produttive marginali svolte dale organizzazioni di volontariato) of 25 May 1995 (GURI No 134 of 10 June 1995, p. 28). That decree sets out those activities and states, first, that they may not involve the use of business methods to ensure their competitivity on the market (such as advertising, illuminated signs, premises equipped on a commercial basis, trade marks) and, second, that the revenue from agreements concluded with public bodies does not constitute such income.

15 Finally, Article 7 of Law No 266/1991 governs the conclusion of such agreements, which may take place only with associations entered in the register of voluntary organisations. Those agreements must regulate the activities of the associations as regards services, continuity of activities, respect for the rights and dignity of users and must also make provision for the manner in which expenses incurred are to be repaid and for insurance cover, for which the public body is to be responsible.

16 That regulatory framework is set out and implemented in the Region of Liguria by Regional Law No 15 on rules on the voluntary sector (legge regionale n. 15 — Disciplina del volontariato) of 28 May 1992 and Regional Law No 41 on the reorganisation of the regional health service (legge di Riordino del Servizio Sanitario Regionale) of 7 December 2006, as amended by Regional Law No 57 of 25 November 2009 ('LR No 41/2006'). The latter regulates the participation of voluntary associations in achieving the objectives of the regional health service.

17 Under Article 75(1) of the LR No 41/2006, the Region of Liguria 'recognises the value and the role of voluntary activities, and encourages their contribution to the attainment of the objectives of the health service which are laid down in the regional programme'. Article 75(2) and (3) states that that contribution is to take the form of agreements concluded with the health agencies in accordance with the arrangements made by the regional executive body having regard to the requirements of consistency and uniformity, in particular, as regards the entering into of framework agreements. In accordance with Article 75a of that regional law, voluntary associations which contribute to the achievement of the objectives of the regional health service must be entered in the register of voluntary organisations provided for by Regional Law No 15 of 28 May 1992.

18 Article 75b of LR No 41/2006, which concerns ambulance services provides:

'1. The provision of ambulance services is an activity of public interest based on observance of the principles of universality, the good of the community, economic efficiency and suitability.

2. The ambulance services referred to in paragraph 1 shall be provided by the relevant health agencies and other bodies providing services whether public or treated as such with their own resources and staff. Where that is not possible, ambulance services shall be entrusted to bodies that satisfy the conditions [laid down by various national or regional laws, regulating the voluntary sector, emergency health care and ambulance services] and [which have] equipment and staff appropriate to ensure the requisite service on the basis of the following principles:

(a) The ambulance services for which the regional health service are responsible shall be entrusted, on a preferential basis, to voluntary associations, to the Croce Rossa Italiana and to other approved public institutions or bodies, with a view to ensuring that that public service is provided in an economically balanced manner for budgetary purposes. Relations with the Croce Rossa Italiana and the associations shall be governed by agreements complying with the provisions of Article 45 of Law No 833 of 23 December 1978 (instituting the national health service); …

(b) Ambulance services may be entrusted to bodies other than those mentioned in subparagraph (a) where the rules in force on public service and public supply contracts are observed.

3. The agreements and protocols referred to in paragraph 2(a) shall provide only, as regards voluntary associations, the Croce Rossa Italiana and the other approved public institutions or bodies, for the reimbursement of expenses actually incurred, according to criteria laid down by the regional council based on the principles of economic efficiency, effectiveness and the absence of any overpayment as regards costs incurred.

…'

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

19 By Decision No 283 of 9 February 2010, the Regione Liguria approved a regional framework agreement concluded with ANPAS, the Consorzio italiano pubbliche assistenze (CIPAS) and the Croce Rossa Italiana — Comitato regionale Liguria, bodies representing voluntary associations, on the regulation of

relations between the health and hospital authorities, on the one hand, and the voluntary associations and the Croce Rossa Italiana — Comitato regionale Liguria, on the other ('the regional framework agreement'), in accordance with Article 75(b)(2)(a) of LR No 41/2006.

20 By Decision No 940 of 22 December 2010, the ASL No 5 implemented that framework agreement, concluding agreements relating to urgent and emergency ambulance services with the voluntary associations affiliated to ANPAS and the Croce Rossa Italiana — Comitato regionale Liguria ('the disputed agreements').

21 San Lorenzo Soc. coop. sociale and Croce Verde Cogema cooperative sociale Onus brought an action against, inter alia, the decisions mentioned in the two preceding paragraphs of the present judgment.

22 Primarily, that action was based on the incompatibility with EU law, in particular, freedom of establishment and freedom to provide services and the principles of equal treatment and non-discrimination, of Article 75b(2)(a) of LR No 41/2006, in so far as that measure provides that ambulance services are to be entrusted on a preferential basis to the Croce Rossa Italiana and to other approved public institutions or bodies, which constitutes discrimination with regard to bodies not undertaking voluntary work, active in that sector.

23 In the alternative, those companies challenged the fact that the payments provided for by the decisions governing the disputed agreements in that regard merely represent the reimbursement of costs incurred by the voluntary associations for providing ambulance services.

24 In the meantime, the Giunta Regionale della Liguria (Regional Government Liguria) adopted Decision No 861 of 15 July 2011 on the model for financial statements to be presented by voluntary associations in order to implement the regional framework agreement. That decision limits reimbursements due to the voluntary bodies responsible for implementing the agreements entered into pursuant to the regional framework agreement to the direct expenditure incurred for the provision of transport services by an association and the reimbursement of indirect and general costs in proportion to the ratio between the total amount of those direct costs and the total amount of direct costs relating to all the activities of that association.

25 The court of first instance upheld the action of the basis of the arguments submitted in the alternative in support of the action. In effect, it held that the regional framework agreement provides for more than a mere reimbursement of costs actually incurred, in so far as it takes into consideration indirect costs and management costs. As a consequence observance of the principles laid down by the FEU Treaty is required.

26 Hearing the appeal against the judgment given at first instance, the Consiglio di Stato (Council of State) asks, first, whether a public authority which decides to use third parties to provide certain services may turn to voluntary organisations on a preferential basis to the exclusion of profit-making entities, in the light of Articles 49 TFEU, 56 TFEU, 105 TFEU and 106 TFEU.

27 It observes that, in accordance with the case-law of the Court, the definition of economic operator does not exclude bodies which are not primarily for profit or even entities which are completely not-for profit, which may compete with undertakings for the award of public contracts by reference to the judgments in *Commission* v *Italy* (C-119/06, EU:C:2007:729) and *CoNISMa* (C-305/08, EU:C:2009:807). That would call into question the right of the public authorities to use voluntary associations for the provision of certain services, to the exclusion of for-profit undertakings, as is the tradition in Italy. Such a system amounts to giving advantages to those associations, for they are given the twofold right to provide services to those authorities in the context of their traditional privilege, on the one hand, and in the context of calls for tender, on the other.

28 That would all the more be the case if the voluntary associations could, in addition, obtain financial resources from the agreements reserved for them, which would enable them to submit attractive offers in public tendering procedures, as would happen if they were authorised to be reimbursed for certain indirect costs for the services they provide without any competition with profit-making undertakings. Such reimbursement would amount to State aid.

29 The national court identifies an issue that it calls 'competition between entities that cannot be placed on the same footing', which the Court has not as yet dealt with in full.

30 In the second place, if recourse by the public authorities to voluntary associations is not, in itself, contrary to the Treaty, the Consiglio di Stato asks about the non-pecuniary nature of the disputed agreements, having regard to the fact that their performance gives rise to reimbursement of expenditure for:

— indirect costs and general expenses of the voluntary bodies covered by the agreements, relating to performance of the activity concerned (utilities, fees, service charges, insurance, operating costs), calculated by reference to the proportion which the total amount of direct costs of that activity for such a body bears to the total amount of direct costs relating to that body's activities; and

— direct costs corresponding to fixed costs, such as staff salaries, that voluntary bodies must bear in any event.

31 In those circumstances, the Consiglio di Stato decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Do Articles 49 TFEU, 56 TFEU, 105 TFEU and 106 TFEU preclude a provision of national law under which ambulance services are awarded [by the competent public bodies], on a preferential basis, to voluntary associations, the Italian Red Cross and other authorised public institutions or bodies, albeit pursuant to agreements which provide only for reimbursement of expenditure actually incurred?

(2) Does EU law on public tendering — in the case under examination concerning contracts [excluded from Directive 2004/18] and the general principles of free competition, non-discrimination, transparency and proportionality — preclude national legislation which permits the direct awarding of [public contracts for] ambulance services on the ground that a framework contract such as [the regional framework agreement], which provides for the reimbursement also of fixed and ongoing costs, must be classified as having a pecuniary interest?'

The questions referred for a preliminary ruling

32 By its two questions, which should be examined together, the referring court asks essentially if the rules of EU law on public procurement and the competition rules in the Treaty must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that the local authorities must entrust the provision of urgent and emergency ambulance services, on a preferential basis, and by direct award, without any form of advertising, to the voluntary associations covered by the agreements which, for the provision of those services, receive only reimbursement for the costs actually incurred for that purpose and a fraction of their fixed and ongoing costs.

33 As regards the interpretation of the rules of EU law on public contracts, it must be recalled, as a preliminary point, that Directive 2004/18 applies to public service contracts, which Article 1(2)(d) thereof defines as public contracts other than public works or supply contracts having as their object the provision of services referred to in Annex II thereto.

34 That annex is divided into two parts, A and B. Urgent and emergency ambulance services are covered by Category 2 in Annex II A to Directive 2004/18 as regards the transport aspects of those services, and Category 25 in Annex II B to that directive as regards the medical aspects thereof (see, with regard to the corresponding categories in Annexes I A and I B to 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) judgment in *Tögel*, C-76/97, EU:C:1998:432, paragraph 39).

35 The order for reference states that the relevant regional rules are implemented, first of all, by the regional framework agreement, concluded with bodies representing the voluntary associations, which sets out the detailed rules of the specific agreements to be concluded between the regional health authorities and those associations and, then, by such specific agreements.

36 Such a framework agreement constitutes a framework agreement within the meaning of Article 1(5) of Directive 2004/18 and therefore falls, generally speaking, within the definition of public contract (see, to that effect, judgment in *Commission* v *Italy*, C-119/2006, EU:C:2007:729, paragraphs 43 and 44), and the fact that it is concluded on behalf of non-profit-making bodies cannot exclude that classification (see, to that effect, judgment in *Commission* v *Italy*, EU:C:2007:729, paragraph 41).

37 It must also be observed that the fact that that framework agreement and the specific agreements which flow from it do not provide for financial payments for the benefit of the voluntary associations other than the reimbursement of costs is not a decisive factor. A contract cannot fall outside the concept of public contract merely because the remuneration remains limited to reimbursement of the expenditure incurred to provide the agreed service (judgment in *Ordine degli Ingegneri della Provincia di Lecce and Others*, C-159/11, EU:C:2012:817, paragraph 29). Therefore, as the Advocate General noted in point 27 of his Opinion, it is immaterial whether the costs to be reimbursed to an association cover only costs directly relating to the performance of the services concerned or extend also to a part of the general costs.

38 Therefore, it must be held that a framework agreement such as the regional framework agreement and the agreements such as those which flow from it fall, in principle, within the scope of Directive 2004/18.

39 In that regard, it is apparent from the order for reference and, in particular, the second question referred, that the referring court starts from the premiss that Directive 2004/18 is not applicable either to the regional framework agreement or to the agreements which flow from it, so that only the principles of the Treaty and the obligation of transparency that they impose are applicable.

40 However, it must be recalled that it is a consequence of the mixed nature of services which, such as those at issue in the main proceedings, are covered by both Annexes II A and II B to Directive 2004/18, that Article 22 of that directive is applicable. In accordance with that article, public contracts or, where appropriate, framework agreements where the value exceeds the relevant threshold laid down in Article 7 thereof and which concern such services must be awarded in accordance with Articles 23 to 55 where the value of the services listed in Annex II A is greater than the value of the services listed in Annex II B.

41 If the value of the services in Annex II B exceeds that of the services in Annex II A, the contract must be awarded in accordance with Articles 23 and 35(4) of Directive 2004/18 only. By contrast, the other rules laid down by the directive in relation to the coordination of procedures, in particular those applicable to the requirements to put out contracts to competition by means of prior advertising and those laid down in Article 53 of the Directive relating to the contract award criteria, are not applicable to such contracts (judgments in *Commission* v *Ireland*, C-507/03, EU:C:2007:676, paragraph 24, and *Commission* v *Ireland*, C-226/09, EU:C:2010:697, paragraph 27).

42 The EU legislature took as its starting-point the assumption that contracts for the services referred to in Annex II B to Directive 2004/18 are, in principle, in the light of their specific nature, not of sufficient cross-border interest to justify their award being subject to the conclusion of a tendering procedure intended to enable undertakings from other Member States to examine the contract notice and submit a tender (see, judgments in *Commission* v *Ireland*, paragraph 25, and *Strong Segurança*, C-95/10, EU:C:2011:161, paragraph 35 and the case-law cited).

43 Therefore, it follows from paragraphs 40 and 41 of the present judgment that, in so far as the value of the regional framework agreement exceeds the relevant threshold laid down in Article 7 of Directive 2004/18, all the procedural rules in that directive or solely those in Articles 23 and 35(4) thereof are applicable depending on whether or not the value of the transport services exceeds the value of the medical services. It is for the referring court to ascertain whether that agreement exceeds the threshold for application and to determine the value of the respective transport and medical services.

44 If the value of the regional framework agreement exceeds the relevant threshold laid down in Article 7 and the value of the transport services exceeds that of the medical services, it must be held that Directive 2004/18 precludes legislation such as that at issue in the main proceedings which provides that the local authorities are to entrust the provision of urgent and emergency ambulance services on a preferential basis and by direct award, without any advertising, to the voluntary bodies mentioned in the agreements.

45 By contrast, if the referring court were to find that either the threshold has not been reached or that the value of the medical services exceeds the value of the transport services, only the general principles of transparency and equal treatment flowing from Articles 49 TFEU and 56 TFEU would be applicable in addition to Articles 23 and 35(4) of Directive 2004/18 (see, to that effect, judgments in *Commission* v *Ireland*, EU:C:2007:676, paragraph 26 and the case-law cited, and *Strong Segurança*, EU:C:2011:161, paragraph 35).

46 However, in order for those principles to apply in relation to public procurement activities in respect of which all the relevant elements are confined to a single Member State, it is necessary for the contract at issue in the main proceedings to be of certain cross-border interest (see, to that effect, judgments in *Commission* v *Ireland*, EU:C:2007:676, paragraph 29; *Commission* v *Italy*, C-412/04, EU:C:2008:102, paragraphs 66 and 81; *SECAP and Santorso*, C-147/06 and C-148/06, EU:C:2008:277, paragraph 21; *Serrantoni and Consorzio stabile edili*, C-376/08, EU:C:2009:808, paragraph 24; and *Commission* v *Ireland*, EU:C:2010:697, paragraph 31).

47 Nevertheless the referring court has not established the findings necessary for the Court to ascertain whether, in the case in the main proceedings, there is certain cross-border interest. As is clear from Article 94 of the Rules of Procedure of the Court of Justice, in the version in force with effect from 1 November 2012, it must be able to find in a request for a preliminary ruling a summary of the facts on which the questions are based and the connection, inter alia, between those facts and the questions. Therefore, the findings necessary to verify the existence of certain cross-border interest, and more generally all the findings to be made by the national courts and on which the applicability of an act of secondary and primary legislation of the European Union depends, must be made before the questions are referred to the Court.

48 By reason of the spirit of cooperation in relations between the national courts and the Court of Justice in the context of the preliminary rulings procedure, the lack of such preliminary findings by the referring court relating to the existence of certain cross-border interest does not lead to the request being inadmissible if, in spite of those failings, the Court, having regard to the information available from the file, considers that it is in a position to give a useful answer to the referring court. That is the case, in particular, where the order for reference contains sufficient relevant information for the existence of such an interest to be determined. However, the Court's answer is given subject to the proviso that, on the basis of a detailed assessment of all the relevant facts in the case in the main

proceedings, certain cross-border interest in the case in the main proceedings is established by the referring court (see judgments in *SECAP and Santorso*, EU:C:2008:277, paragraph 34 and *Serrantoni and Consorzio stabile edili*, EU:C:2009:808, paragraph 25).

49 As regards the objective criteria that may indicate the existence of a cross-border interest, the Court has already held that such criteria may be, in particular, that the contract in question is for a significant amount, in conjunction with the place where the work is to be carried out or the technical characteristics of the market (see judgments in *SECAP and Santorso*, EU:C:2008:277, paragraph 31, and *Belgacom*, C-221/12, EU:C:2013:736, paragraph 29). The referring court may, in its overall assessment of the existence of certain cross-border interest also take account of the existence of complaints brought by operators situated in other Member States, provided that it is determined that those complaints are real and not fictitious. More particularly, as regards ambulance services, the Court has held, in an action for failure to fulfil obligations, that certain cross-border interest cannot be established solely on the basis of the fact that several operators in other Member States had lodged a complaint with the European Commission and that the contracts concerned were of significant economic value (see, to that effect, judgment in *Commission* v *Germany*, C-160/08, EU:C:2010:230, paragraph 18, 27 et seq., 54 and 123).

50 Subject to that proviso, it must be held that the general principles of transparency and equal treatment flowing from Articles 49 TFEU and 56 TFEU may, in principle, be applicable to a framework agreement such as the regional framework agreement and agreements such as those flowing from it.

51 EU law on public tendering, in so far as it concerns, inter alia, public service contracts, is intended to ensure the free movement of services and the opening-up to competition in the Member States which is undistorted and as wide as possible (see judgment in *Bayerischer Rundfunk and Others*, C-337/06, EU:C:2007:786, paragraph 39 and the case-law cited).

52 It must therefore be held that a system of agreements such as that instituted by Article 75b of the LR No 41/2006 leads to a result contrary to those objectives. By providing that the competent public authorities are to have recourse, by direct award, on a preferential basis to voluntary associations covered by the agreements to satisfy needs in that area, such legislation excludes for-profit entities from an essential part of the market concerned. According to the case-law of the Court, the award, in the absence of any transparency, of a contract to an undertaking located in the same Member State as the contracting authority amounts to a difference in treatment to the detriment of undertakings which might be interested in that contract but are situated in another Member State. Unless it is justified by objective circumstances, such a difference in treatment, which, by excluding all undertakings located in another Member State, operates mainly to the detriment of the latter undertakings, amounts to indirect discrimination on the basis of nationality, prohibited under Articles 49 TFEU and 56 TFEU (see, to that effect, judgments in *Commission* v *Ireland*, EU:2007:676, paragraphs 30 and 31; *Commission* v *Italy*, EU:C:2007:729, paragraph 64; and *Commission* v *Italy*, EU:C:2008:102, paragraph 66).

53 However, it must be held that, under Article 75b(1) and (2)(a) of the LR No 41/2006, the method of organising ambulance services at issue in the main proceedings is grounded in the principles of universality, the good of the community, economic efficiency and suitability, the recourse on a preferential basis to the voluntary organisations covered by the agreement seeking specifically to ensure that that public service is provided in an economically balanced manner for budgetary purposes. In so far as it provides for the participation of voluntary associations in a public service and refers to the principle of the good of the community, Article 75b is part of the constitutional and legal provisions relating to the voluntary activities of citizens mentioned in paragraphs 9 to 11 of the present judgment.

54 Such objectives are taken into consideration by EU law.

55 In that connection, it must be recalled, in the first place, that EU law does not detract from the power of the Member States to organise their public health and social security systems (see to that effect, in particular, judgments in *Sodemare and Others*, C-70/95, EU:C:1997:301, paragraph 27 and the case-law cited, and *Blanco Pérez and Chao Gómez*, C-570/07 and C-571/07, EU:C:2010:300, paragraph 43 and the case-law cited).

56 It is true, in the exercise of that power the Member States may not introduce or maintain unjustified restrictions of the exercise of fundamental freedoms in the area of health care. However, in the assessment of compliance with that prohibition, account must be taken of the fact that the health and life of humans rank foremost among the assets or interests protected by the Treaty and it is for the Member States, which have a discretion in the matter, to decide on the degree of protection which they wish to afford to public health and on the way in which that degree of protection is to be achieved (see to that effect, judgments in *Commission* v *Germany*, C-147/07, EU:C:2008:492, paragraphs 46 and 51 and the case-law cited, and *Blanco Pérez and Chao Gómez*, EU:C:2010:300, paragraphs 43, 44, 68 and 90 and the case-law cited).

57 Furthermore, not only the risk of seriously undermining the financial balance of a social security system may constitute per se an overriding reason in the general interest capable of justifying an obstacle to the freedom to provide services, but also the objective of maintaining, on grounds of public health, a balanced medical and hospital service open to all may also fall within one of the derogations, on grounds of public health in so far as it contributes to the attainment of a high level of health protection (see to that effect, judgment in *Stamatelaki*, C-444/05, EU:C:2007:231, paragraphs 30 and 31 and the case-law cited). Thus, measures which aim, first, to meet the objective of guaranteeing in the territory of the Member State concerned sufficient and permanent access to a balanced range of high-quality medical treatment and, secondly, assist in ensuring the desired control of costs and prevention, as far as possible, of any wastage of financial, technical and human resources are also covered (see to that effect judgment in *Commission* v *Germany*, EU:C:2008:492, paragraph 61).

58 In the second place, it must be recalled that, in paragraph 32 of the judgment in *Sodemare and Others*, EU:C:1997:301, the Court held that a Member State may, in the exercise of the powers it retains to organise its social security system, consider that a social welfare system for elderly people necessarily implies, with a view to attaining its objectives, that the admission of private operators to that system as providers of social welfare services is to be made subject to the condition that they are non-profit-making.

59 Therefore, a Member State, in the context of its discretion to decide the level of protection of public health and to organise its social security system, may take the view that recourse to voluntary associations is consistent with the social purpose of the emergency ambulance services and may help to control costs relating to those services.

60 However, it must be observed that a system of organisation of the emergency ambulance services such as that at issue in the main proceedings, consisting, for the competent authorities, in recourse on a preferential basis to voluntary associations, must actually contribute to the social purpose and the pursuit of the objectives of the good of the community and budgetary efficiency on which that system is based.

61 In that connection, it is essential that, where they act in that context, the voluntary associations do not pursue objectives other than those mentioned in the previous paragraph of the present judgment, do not make any profit as a result of their services, apart from the reimbursement of the variable, fixed and on-going expenditure necessary to provide them, and do not procure any profit for their members. Furthermore, although it is permissible to maintain a workforce, for it would, without one, be almost impossible for those associations to act effectively in numerous domains in which the principle of the good of the community may naturally be implemented, the activities of those associations must strictly comply with the requirements laid down by national law.

62 Having regard to the general principle of EU law on the prohibition of abuse of rights (see, by analogy, judgment in *3M Italia*, C-417/10, EU:C:2012:184, paragraph 33), the application of that legislation cannot be extended to cover the wrongful practices of voluntary associations or their members. Thus, the activities of voluntary associations may be carried out by the workforce only within the limits necessary for their proper functioning. As regards the reimbursement of costs, it must be ensured that profit making, even indirect, cannot be pursued under the cover of a voluntary activity and that volunteers may be reimbursed only for expenditure actually incurred for the activity performed, within the limits laid down in advance by the associations themselves.

63 It is for the national court to carry out all the assessments required in order to verify whether the system of organisation of emergency ambulance services at issue in the main proceedings, as regulated by the applicable legislation and implemented by the regional framework agreements and the individual agreements which flow from there, actually contributes to the social purpose and the pursuit of the objectives of the good of the community and budgetary efficiency on which that system is based.

64 As regards the interpretation of the rules of the Treaty on competition, it follows from the findings relating to the interpretation of EU law on public procurement that there is no need to examine legislation such as that at issue in the main proceedings in relation to those rules on competition.

65 Having regard to all of the foregoing considerations, the answer to the questions referred is that Articles 49 TFEU and 56 TFEU must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which provides that the provision of urgent and emergency ambulance services must be entrusted on a preferential basis and awarded directly, without any advertising, to the voluntary associations covered by the agreements, in so far as the legal and contractual framework in which the activity of those associations is carried out actually contributes to the social purpose and the pursuit of the objectives of the good of the community and budgetary efficiency on which that legislation is based.

Costs

66 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 (Fifth Chamber) hereby rules:

Articles 49 TFEU and 56 TFEU must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which provides that the provision of urgent and emergency ambulance services must be entrusted on a preferential basis and awarded directly, without any advertising, to the voluntary associations covered by the agreements, in so far as the legal and contractual framework in which the activity of those associations is carried out actually contributes to the social purpose and the pursuit of the objectives of the good of the community and budgetary efficiency on which that legislation is based.

[Signatures]