

Operative part of the judgment

The refusal, on the part of the competent authorities of a Member State, to issue a router for access to the private virtual network for lawyers to a lawyer duly registered at a Bar of another Member State, for the sole reason that that lawyer is not registered at a Bar of the first Member State, in which he wishes to practise his profession as a free provider of services, in situations where the obligation to work in conjunction with another lawyer is not imposed by law, constitutes a restriction on the freedom to provide services under Article 4 of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services, read in the light of Article 56 TFEU and the third paragraph of Article 57 TFEU. It is for the national court to determine whether such a refusal, in the light of the context in which it is put forward, genuinely serves the objectives of consumer protection and the proper administration of justice which might justify it and whether the resulting restrictions do not appear to be disproportionate in regard to those objectives.

⁽¹⁾ OJ C 165, 10.5.2016.

Judgment of the Court (Eighth Chamber) of 11 May 2017 (request for a preliminary ruling from the Krajowa Izba Odwoławcza — Poland) — Archus sp. z o.o., Gama Jacek Lipik v Polskie Górnictwo Naftowe i Gazownictwo S.A.

(Case C-131/16) ⁽¹⁾

(Reference for a preliminary ruling — Public procurement — Directive 2004/17/EC — Principles of awarding contracts — Article 10 — Principle of equal treatment of tenderers — Requirement for contracting authorities to request tenderers to amend or supplement their tender — Right of the contracting authority to retain the bank guarantee in the event of refusal — Directive 92/13/EEC — Article 1(3) — Review procedures — Decision to award a public contract — Exclusion of a tenderer — Actions for annulment — Interest in bringing proceedings)

(2017/C 239/17)

Language of the case: Polish

Referring court

Krajowa Izba Odwoławcza

Parties to the main proceedings

Applicant: Archus sp. z o.o., Gama Jacek Lipik

Defendant: Polskie Górnictwo Naftowe i Gazownictwo S.A.

Intervener: Digital-Center sp. z o.o.

Operative part of the judgment

1. The principle of equal treatment of economic operators set out in Article 10 of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors must be interpreted as precluding, in a public procurement procedure, the contracting authority from inviting a tenderer to submit declarations or documents whose communication was required by the tender specification and which have not been submitted within the time limit given for the submission of tenders. On the other hand, that article does not preclude the contracting authority from inviting a tenderer to clarify a tender or to correct an obvious clerical error in that tender, on condition, however, that such an invitation is sent to all tenderers in the same situation, that all tenderers are treated equally and fairly, and that that clarification or correction may not be equated with the submission of a new tender, which is for the referring court to determine.

2. Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007, must be interpreted as meaning that, in a situation such as that at issue in the main proceedings in which, in a public procurement procedure two tenders have been submitted and the contracting authority has adopted two simultaneous decisions rejecting the offer of one tenderer and awarding the contract to the other, the unsuccessful tenderer who brings an action against those two decisions must be able to request the exclusion of the tender of the successful tenderer, so that the concept of ‘a particular contract’ within the meaning of Article 1(3) of Directive 92/13, as amended by Directive 2007/66, may, where appropriate, apply to the possible initiation of a new public procurement procedure.

⁽¹⁾ OJ C 211, 13.6.2016.

Judgment of the Court (Fifth Chamber) of 18 May 2017 (request for a preliminary ruling from the Curtea de Apel Craiova — Romania) — Fondul Proprietatea SA v Complexul Energetic Oltenia SA (Case C-150/16) ⁽¹⁾

(Reference for a preliminary ruling — State aid — Debt owed to a company of which the Romanian State is the majority shareholder by a company of which that State is the sole shareholder — Transfer in lieu of payment — Definition of ‘State aid’ — Obligation to notify the European Commission)

(2017/C 239/18)

Language of the case: Romanian

Referring court

Curtea de Apel Craiova

Parties to the main proceedings

Applicant: Fondul Proprietatea SA

Defendant: Complexul Energetic Oltenia SA

Operative part of the judgment

1. In circumstances such as those in the main proceedings, the decision of a company of which a Member State is the main shareholder to accept, in order to extinguish a debt, a transfer in lieu of payment of an asset which is the property of another company of which that Member State is the only shareholder and to pay a sum corresponding to the difference between the estimated value of that asset and the amount of that debt is liable to constitute State aid within the meaning of Article 107 TFEU if:

- that decision constitutes an advantage granted directly or indirectly by means of State resources and is imputable to the State,
- the beneficiary undertaking has not obtained facilities comparable to a private creditor, and
- that decision is liable to affect trade between the Member States and distort competition.

It is for the referring court to ascertain whether those conditions are met.

2. If a national court classifies as State aid the decision of a company of which a Member State is the majority shareholder to accept a transfer in lieu of payment of an asset owned by another company of which that Member State is the sole shareholder, in order to extinguish a debt, and to refund a sum corresponding to the difference between the estimated value of that asset and the amount of the debt, the authorities of that Member State are required to notify that aid to the Commission before it is put into effect, in accordance with Article 108(3) TFEU.

⁽¹⁾ OJ C 200, 6.6.2016.